SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1902.

No. 13, ORIGINAL.

EX PARTE: IN THE MATTER OF JAMES S. BARTON KEY, PETITIONER.

TRANSCRIPT OF RECORD FROM COURT OF APPEALS, DISTRICT OF COLUMBIA, APRIL TERM, 1902.

No. 1220.

JAMES S. BARTON KEY, APPELLANT,

vs.

WILLIAM F. ROBERTS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 14, 1902.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 23, 1903.

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In the Court of Appeals of the District of Columbia

JAMES S. BARTON KEY, Appellant,
vs.
WILLIAM F. ROBERTS. } No. 1220.

a Supreme Court of the District of Columbia.

WILLIAM F. ROBERTS, Plaintiff,
vs.
JAMES S. BARTON KEY and JAMES P. SCOTT, Copartners, Defendants. } No. 44625. At Law.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Writ.*

Filed April 18, 1902.

44625.

DISTRICT OF COLUMBIA, *ss:*

The President of the United States to Aulick Palmer, U. S. marshal, Greeting:

Summon J. S. Barton Key and James P. Scott, copartners, to be and to appear before me, the subscriber, a justice of the peace in and for the District aforesaid, on the 9th day of Feb., A. D. 1901, at 10 o'clock a. m., to answer unto the complaint of William F. Roberts in a plea of debt of $196.30.

Given under my hand and seal this 5th day of Feb., A. D. 1901.

A. S. TAYLOR, *J. P.* [SEAL.]

Marshal's Return.

8th day of Feb'y, 1901, personally summoned as within directed as to James P. Scott.

AULICK PALMER,
U. S. Marshal.

2 *Writ.*

Filed April 18, 1901.

44625.

DISTRICT OF COLUMBIA, *ss:*

The President of the United States to C. V. Mallet or any qualified constable, Greeting:

Summon J. S. Barton Key and James P. Scott, copartners, to be and to appear before me, the subscriber, a justice of the peace in and for the District aforesaid, on the 9 day of Feb., A. D. 1901, at 10 o'clock a. m., to answer unto the complaint of William F. Roberts in a plea of debt of $196.30.

Given under my hand and seal this 5 day of Feb., A. D. 1901.

A. S. TAYLOR, *J. P.* [SEAL.]

Constable's Return.

FEB. 13TH, 1901.

Summoned as within directed as to J. S. Barton Key.

CHARLES V. MALLET, *Constable.*

3 *Itemized Bill of W. F. Roberts.*

Filed April 18, 1901.

J. S. Barton Key [and James P. Scott, copartners]* Dr., to W. F. Roberts, 730 15th street, Washington city. 44625.

1900.				
Dec.	1	To 200 letter & 200 ½ letter-hdgs	3 50	
	7	" 200 wine cards	1 50	
	11	" 500 envelopes	2 50	
	13	" sketch of arms	1 25	
	15	" 1000 letter-headings	5 50	
		" 1000 ½ letter-hdgs	3 50	
	21	" 1000 follow sheets	4 00	
	24	" 1000 wine cards	2 50	
	31	" 200 circulars, envs. & autograph	7 00	
				31 25
1901.				
Jan.	8	" 100 invitations & envelopes	3 00	
		" 75 dinner slips	3 00	
	9	" 50 special evening cards	4 50	
	10	" 100 dinner slips, 2nd lot	3 00	
	11	" 12 special menus, Mrs. May	2 00	
		" 100 cloak checks	1 00	
	12	" 100 " "	1 00	
		" 50 all-day bills	10 00	
	14	" 25 breakfast bills	6 25	
		" 25 all-day bills & changing	5 50	
		" 1000 envelopes	3 00	
		" 4 cards, officers' breakfast	1 25	
	15	" 1500 letter-headings	7 00	
		" 1500 note "	6 00	
		" 25 all-day bills & changing	5 50	[$1 pd. Marshal.]*

[*Words and figures enclosed in brackets in pencil in copy.]

		To 4 cards, officers' breakfast	1 25	
	16	" 1000 bills	3 25	
	17	" 1000 invitations, 850 envelopes	10 25	
	18	" 100 special booklets, breakfast	28 50	
	19	" creet	7 50	
		" 25 wine lists	9 00	
		" 100 special muenus, 19th & 20th	1 75	
		" 100 cards, automobile service	2 25	
		" 30 special Sunday lunch	1 25	
				127 00
[1.65 pd.]* [1.60 "]*				158 25
4		Amount forward	158 25	
Jan.	19	To 50 night luncheon	1 25	
	25	" 200 circulars, 250 envelopes	4 25	
	26	" 12 wine lists	1 25	
		" 40 menus, newspaper men	2 50	
		" 8 special menus, Sat., 26th	1 00	
	28	" 1000 small bills	2 50	
	30	" 25 all-day bills	2 50	
		" 1000 6¾ envelopes	3 00	
		" *Carte du Jour*, 14 days	13 80	
				190 30
Feb.	2	" 25 special evening cards	1 50	
		" 50 all-day bills	3 00	
		" 40 menus, Lehigh	1 50	
				6 00
				196 30

[* Words and figures enclosed in brackets in pencil in copy.]

Memorandum.

April 9, 1901.—Appeal and appeal bond filed in justice's court.

5 *Certificate of Proceedings.*

Filed April 18, 1901.

In Justice's Court of the District of Columbia—Before Anson S. Taylor, a Justice of the Peace.

WILLIAM F. ROBERTS, Plaintiff,
vs.
J. S. BARTON KEY and JAMES P. SCOTT, Copartners, Defendants.

No. 48692. Action for Debt for $196.30. 44625.

Date.	Proceedings.
Feb. 5, 1901	Summons issued to C. V. Mallet, constable; also to Aulick Palmer, U. S. marshal; returned Feb. 8/01, summoned as within directed, personally as to Jas. P. Scott. Aulick Palmer, U. S. marshal. Feb. 9/01, plaintiff appeared by counsel, def'd't Scott by counsel, and case continued until Feb. 14/01, 2.30 p. m. Feb. 13/01, summons returned, summoned as within directed as to J. S. Barton Key. C. V. Mallet, constable. Feb. 13/01, subpœna issued for J. S. Barton Key and Chas. Dailey, witnesses for plaintiff; returned Feb. 14/01, summoned as within directed. C. V. Mallet, constable. 1.60/100 costs. Feb. 14/01, continued until Feb. 19/01, 3 p. m.; again until Feb. 26/01 3 p. m.; again until Mar. 6/01, 3 p. m.; again until Mar. 13/01, 3 p. m.; again until Mar. 20/01, 3. p. m.; again until Mar. 27/01, 3 p. m.; again until April 3/01, 3 p. m.
April 3, 1901	Judgment for plaintiff after trial for $196.30/100 debt, on interest from Feb. 5, '01, with $6 60/100 costs. Notice of appeal given April 11/01. Undertaking on appeal filed and approved, with the United States Fidelity and Guarantee Co. as surety, 75c. costs. April 11/01, certification appeal, 50c. costs. A. S. TAYLOR, *J. P.* [SEAL.]

6 DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

I, Anson S. Taylor, one of the justices of the peace in and for the said county and District, do hereby certify that the foregoing is a true statement from my docket of all the proceedings had before me in the above cause, and that the annexed are all the original papers therein.

Given under my hand and seal this 11 day of April, A. D. 1901.

A. S. TAYLOR, *J. P.* [SEAL.]

Cost, paid by plaintiff, $6.60.
Cost, paid by defendant, $1.25.

Supreme Court of the District of Columbia.

Memorandum.

January 23, 1902.—Verdict for plaintiff against J. S. Barton Key, defendant, for $196.30.

7 Supreme Court of the District of Columbia.

FRIDAY, *February* 28, 1902.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

By Justice Anderson.

WILLIAM F. ROBERTS, Plaintiff,
vs.
JAMES S. BARTON KEY and JAMES P. SCOTT, Defendants. } At Law. No. 44625.

Upon hearing the motion for a new trial filed herein by the plaintiff, it is considered that said motion be, and hereby is, overruled and judgment on verdict ordered; therefore it is considered that the plaintiff recover against James S. Barton Key and the United States Fidelity and Guaranty Company, his surety, one hundred and ninety-six dollars and thirty cents ($196.30), being the money payable by them to the plaintiff by reason of the premises, together with his costs of suit, to be taxed by the clerk, and have execution thereof; and, further, it is considered that James P. Scott go thereof without day and recover against the plaintiff his costs of defense, to be taxed by the clerk, and have execution thereof.

8 *Order for Appeal.*

Filed March 7, 1902.

In the Supreme Court of the District of Columbia, the 7th Day of March, 1902.

WILLIAM F. ROBERTS, Plaintiff,
vs.
JAMES S. BARTON KEY and JAMES P. SCOTT, Copartners. } At Law. No. 44625.

The clerk of said court will please note an appeal to the Court of Appeals from the judgment entered in the above cause on February 28th, 1902, and issue citation.

HENRY P. BLAIR,
Attorney for J. S. Barton Key.

9 In the Supreme Court of the District of Columbia.

WILLIAM F. ROBERTS
vs.
JAMES S. BARTON KEY and JAMES P. SCOTT. } At Law. No. 44625.

The President of the United States to William F. Roberts, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause

therein, under and as directed by the rules of said court, pursuant to an appeal filed in the clerk's office of the supreme court of the District of Columbia on the 7th day of March, 1902, wherein James S. Barton Key is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 7th day of March, in the year of our Lord one thousand nine hundred and two (1902).

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS, *Ass't Clerk*.

Service of the above citation accepted this 14th day of March, 1902.

W. C. PRENTISS,
Attorney for Appellee.

10 *Memorandum.*

March 13, 1902.—$50 deposited in lieu of appeal bond.

Memorandum.

March 31, 1902.—Term prolonged 38 days to settle exceptions.

11 Supreme Court of the District of Columbia.

MONDAY, *April* 28, 1902.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

WILLIAM F. ROBERTS, Plaintiff,
vs.
J. S. BARTON KEY ET AL., Defendants. } At Law. No. 44625.

Now again comes here the defendant J. S. Barton Key, by his attorney, and tenders to the court here his bill of exceptions taken during the trial of this cause, and prays that the same may be duly signed, sealed, and made part of the record, now for then, which is accordingly done.

12 *Bill of Exceptions.*

Filed April 28, 1902.

In the Supreme Court of the District of Columbia.

WILLIAM F. ROBERTS, Plaintiff,
vs.
J. S. BARTON KEY and JAMES P. SCOTT, Co-partners, Defendants. } No. 44625. At Law.

Bill of exceptions.

Be it remembered that the above-entitled cause came on for trial before Mr. Justice Anderson and a jury on January 20th, 1902, Mr. William C. Prentiss appearing on behalf the plaintiff, Mr. Henry P. Blair appearing on behalf of the defendant J. S. Barton Key, and Mr. F. D. McKenney and Mr. J. S. Flannery on behalf of the defendant James P. Scott.

Thereupon the plaintiff demanded that a jury be drawn, and, the attorneys for the respective defendants assenting thereto,
13 a jury was drawn, and, counsel for all parties having waived any and all objection to the manner in which said panel was made up or drawn, said jury was sworn.

And thereupon counsel for the plaintiff, to maintain the issues on his part joined, introduced evidence as follows:

WILLIAM F. ROBERTS, the plaintiff, as a witness in his own behalf, stated that his occupation was that of engraving and printing stationery; that he was acquainted with the defendant Key, but not with the defendant Scott; that he had had business dealings with the defendant Key in the way of supplying printed bills of fare, note-heads, and stationery for the Hotel Barton; that he had his books of original entry containing the account for such supplies in court; that all orders covering the different items of work and stationery were placed with him by Mr. Key; that the transcript of the account annexed to the writ in this case was a correct transcript from his ledger; that the account as so made up was rendered to Mr. Key and admitted by him to be correct.

Thereupon, on cross-examination by the attorney for the defendant Scott, the witness stated that the pencil writing on said transcript of account annexed to the writ in this case was in the handwriting of his attorney, Mr. Prentiss; that witness had never had any conversation with Mr. Scott in regard to the business covered by the account sued on at any time; that all orders were given to him by Mr. Key or by Mr. Key's chef; that all charges on his books of original entry and on his ledger relating to this account were entered in the name of "J. S. Key," "J. Bar-
14 ton Key," and "Hotel Barton;" that none of them were entered in the name of Mr. Scott, nor does Mr. Scott's name

appear in connection with such items on those books; the sole debtor's name on the ledger in connection with said items is that of J. S. Barton Key; that the typewritten transcript of the account annexed to the writ in this case is a correct copy of the ledger account, in so far as it is typewritten; that the words "and James P. Scott, copartners," which are written on the account in lead pencil, were written thereon by Mr. Prentiss after the time the suit was brought or just about the time; that this account was made up about the time the hotel went into the hands of the receiver—that is, about February 4th or February 5th.

Witness also testified on cross-examination that the printing done by him included envelopes and letter-heads, wine cards, cloak checks, and the like; that on some of these papers no name appeared except the name of the hotel, and that on the letter-headings on which Mr. Key's name appeared his name was followed by the word "proprietor;" that no payments had been made on the present account; that prior to the opening of the present account Mr. Key had a small account for stationery for the Hotel Barton, and had settled the same; that said account was paid by check, and while witness did not remember fully about the check he had no doubt that the same was a check of Mr. Key.

Thereupon, at the demand of the attorney for the plaintiff and pursuant to notice duly served upon him in accordance with
15 rules of court, the attorney for the defendant Scott produced and handed to attorney for plaintiff the following letter, which was thereupon read in evidence without objection:

"Room 719, Postal Telegraph building.

NEW YORK, *Nov.* 7, 1900.

Mr. James P. Scott, Waldorf-Astoria, New York.

DEAR SIR: I write this to confirm our conversation of a few days ago, until such papers can be executed that will be satisfactory to both parties.

It is understood by me that I hereby bind myself to the effect that in consideration of your going on my bond for the lease of the Wellington Hotel property and investing in repairing and opening said hotel a sum of money not to exceed $5,000, which $5,000 under the terms of my lease are to be deducted from the rent at the rate of $1,000 per year, I hereby agree that the finances of the said hotel shall be handled by a treasurer or cashier to be appointed or approved by you; that all payments shall be made only on joint check of said cashier and myself, and that you shall receive in consideration of the foregoing from me a sum equal to one-half of my profits.

Very truly yours, JAS. BARTON KEY."

CHARLES F. DALY, a witness on behalf of the plaintiff, testified as follows:

That during the months of November and December, 1900, and January and February, 1901, he was barkeeper at the Barton hotel;

that he went to work there about November 22nd and
16 stayed until the receiver took hold of the property, about February 5th, 1901; that Mr. Scott first came to the hotel the latter part of November or first of December; perhaps stayed there two or three days, and was backwards and forwards, off and on, until the receivers took charge; that "Mr. Scott came in and I was introduced to him by Mr. Key as a partner:" that Mr. Scott spoke to Mr. Key in regard to different things about the hotel; gave his opinion regarding the paper, and things of that sort. Mr. Scott spoke to witness about the pictures in the bar not hanging as they should. Mr. Key gave witness instructions to give Mr. Scott whatever he desired from the bar. Mr. Key would give Mr. Scott an introduction to a gentleman as his partner. I have heard him lots of times. Mr. Scott told witness that he was to bring Mrs. Page over to act as cashier to handle the money and sign all the checks. Mrs. Page acted as cashier at the hotel, and took the receipts from the bar every night after Mr. Key had left the hotel. She carried the money upstairs to Mr. Scott.

On cross-examination the witness testified that he had accompanied Mrs. Page to Mr. Scott's room on one occasion when she had the bar money in the tin box.

On redirect examination the witness stated that after Mr. Key had left the hotel and gone to Baltimore Mr. Scott told him to continue at the hotel and he would see that everything went all right; that Mrs. Page would accept the money at night. He thought Mrs. Page came to the hotel about January, 1901.

(Mr. PRENTISS:)

Q. Did you ever have any conversation with Mr. Scott respecting his interest in the hotel, if any?

A. Only to look after it and do what I could for them in regard to business matters.

Q. Did he ever say to you what interest he had in the hotel, or what relation he bore to it?

A. No. He didn't make any statement of that sort.

Q. Did he ever tell you who the proprietor of the hotel was?

A. No, sir; he didn't.

Mr. Key left the hotel for Baltimore on the 2nd of February, 1901, which was a Saturday, and the receivers took charge of the hotel on the following Tuesday. Mr. Key came down to the bar and said
he was going. He shook hands with me and said good bye,
17 and that's all I saw of him.

On recross-examination the witness testified that he was employed in the hotel as a barkeeper by Mr. J. Barton Key on the 22nd day of November, 1900; that Mr. Key gave him all instructions with regard to the management of the bar and paid him a salary; that he had no conversation whatever with Mr. Scott until some time in December; on this occasion Mr. Scott was sitting in the bar and complimented him upon the nice appearance of the lunch counter, and made certain suggestions with respect to making

the bar look attractive. Other persons who dropped into the bar also complimented him and made suggestions to him, but he did not regard their compliments and suggestions as much as he did those coming from Mr. Scott, as he attached more weight to what Mr. Scott would say than to what Smith or Jones might say. Witness never received any money from Mr. Scott, and, apart from ordering him to straighten up some pictures hanging in the bar, never took any orders from him. Witness was introduced to Mrs. Page by the head bellman. Mr. Scott did not bring Mrs. Page in in order to introduce her to witness, though he remarked on one occasion when Mrs. Page was present, "This is my bar and this is my barkeeper." Witness understood that Mrs. Page was Mr. Scott's cousin. Mr. Scott remarked to him, "I am going to bring a cousin of mine over here; she is poor and she wants the position, and she is a nice woman, and I am going to put her in charge of my money and to sign all checks." Witness did not know what money Mr. Scott had or what checks he would have to sign about the hotel. Witness only knew that Mrs. Page was the person Mr. Scott referred to as his cousin, because James Robinson, Mr. Scott's colored valet, said so.

Thereupon attorney for the plaintiff introduced in evidence the bill of complaint filed in the supreme court of the District of Columbia, in equity cause No. 22044, wherein James P. Scott was complainant and James Barton Key was defendant, on the ground
18 that said bill of complaint contained an admission by Mr. Scott as to his relations with Mr. Key, said bill of complaint reading as follows:

"To the honorable the associate justice of the supreme court of the District of Columbia, holding an equity term:

Your complainant, James P. Scott, who sues in this action in his own right and in behalf of any and all other creditors of the above-named defendant, James Barton Key, who may seek relief by and contribute to the costs and expenses of these proceedings, respectfully shows:

1. Your complainant is a citizen of the United States and of the State of Pennsylvania, recently residing in Paris and at present temporarily sojourning in the city of Washington, in the District of Columbia.

The defendant, James Barton Key, is a citizen of the United States, having his domicile in the city of Baltimore, in the State of Maryland.

2. That some time in November, A. D. 1900, the defendant represented to your complainant that he was about to embark in the enterprise of keeping a hotel in the city of Washington, District of Columbia, and applied to this complainant for assistance in such regard, representing to your complainant that with such assistance as your complainant was able to and would extend to him the defendant would be able to secure a lease of the premises situated at 723 15th street northwest, in the city of Washington, formerly known as Welcker's hotel and later as the Hotel Wellington.

3. Your complainant, being impressed with the repre-
19 sentations made to him by said defendant, agreed, as re-
quested, to become surety for the prompt payment of the rent of said premises under the contemplated lease, and also to advance from time to time, as occasion might require, sums of money, not to exceed $5,000 in the aggregate, for the purpose of necessary repairs and improvements to be made in and about said premises, it being understood by and between your complainant and said defendant that the said sums of money so advanced should be repaid out of a rebate which was to be allowed by the lessor to the lessee, and that in consideration of your complainant becoming surety for the prompt payment of the rent as aforesaid and the advancements of said sums of cash, this complainant should be entitled, by his agent acting as treasurer or cashier, to handle all the receipts of said business, and to receive for his own use and benefit from the defendant one-half of the profits to be derived from the conduct of said business, it being further understood that, except as above set forth, your complainant was not to be identified with or concerned in the conduct of said enterprise.

4. On or about the 5th day of November, 1900, said defendant did enter into a lease of the premises in question with one Cecilia d'Andigna, acting through and by Henry May, her attorney-in-fact, which said lease granted to the defendant the use and occupation of the premises in question for a period of five years, to begin on the 1st day of December, 1900, the rent reserved being the sum of $7,500 per annum, payable monthly in advance at the rate of $625 per month, with a rebate to the lessee on account of improvements made and to
be made in and about said premises of the sum of $5,000,
20 to be deducted from the said rent reserved at the rate of $1,000
per annum; that, in accordance with the agreement above set forth, this complainant did become surety upon said lease for the prompt payment of the rent reserved and did further advance the said sum of $5,000 in cash to pay for the necessary improvements and repairs to said premises; that, notwithstanding your complainant had thus fully complied with his obligations under said agreement, he has, at the instance and request and as the result of the importunities of the defendant, advanced to said defendant, to be by him applied in the stocking and equipping of the premises in question and the preparation of the same for the reception of guests and for and on account of the conducting of the same as a hotel, further sums of money, aggregating, in addition to the sum of $5,000 above set forth, the further sum of about $3,000, making a total of cash advanced of about $8,000, and has also from time to time, at the instance and request of said defendant, endorsed said defendant's promissory notes in various sums, the total amount of said notes which have been discounted or otherwise disposed of by said defendant aggregating, as this complainant believes, approximately $2,000.

5. For the purpose of carrying on the business of a hotel in the premises aforesaid, extensive improvements and repairs both of the hotel property itself and of the contents thereof were made by the

said defendant, who used for such purposes in a large measure the cash furnished by your complainant above referred to. Your complainant is informed and believes, and therefore avers,
21 that, notwithstanding the large payment of cash on such accounts, that there *is* still due and owing from said defendant to builders and materialmen, to upholsterers and decorators, and to dealers in supplies of various sorts and kinds considerable sums of money, aggregating, as your complainant believes, the further sum of $10,000, and that many of said creditors insist upon immediate payment of the amount due to them.

6. Your complainant avers that some time during the month of December, 1900, the said premises, being in fit condition, were opened by said defendant as a hotel, under the name of "Barton's," and that since such opening it has, until the present time, been conducted by said defendant as a hotel, but notwithstanding the distinct agreement between defendant and your complainant that the latter, by his agent acting as treasurer or trustee, should handle the receipts of said business, the said defendant has not permitted the same to be done, nor has he at any time rendered to your complainant any account of the sums received in the course of such business, nor of the disposition made thereof, but, on the contrary, although often requested so to do, has refrained from making such accounting, and has kept this complainant in the dark as to the financial condition of said business.

8. Your complainant avers that said defendant has failed and neglected to pay out of said receipts the rent for said premises for the months of January and February, 1901, as will more fully appear from a letter this day received from J. V. N. Huyck, a real-estate broker having charge of the collection of said rents for the lessor, which said letter and its enclosure is hereto annexed,
22 made a part hereof, and marked "Exhibits A and B" respectively.

Complainant further avers that defendant has neglected for several weeks past to pay to the employés of said hotel their respective wages and has likewise neglected to pay to the market men and to supply men of various sorts the amounts which have become due and owing to them.

8. The complainant avers that the defendant is lacking in natural ability and unfit by training for the management of said business; that he is without means to defray the many obligations which he has incurred, is in a bad state of health, and has left this jurisdiction; that the hotel is without proper supplies requisite and necessary to enable the business to be further conducted; that the servants and employés are clamoring for their wages and the dealers in market and other supplies demand immediate payment; that the entrances and corridors of the building are obstructed by creditors clamoring for payment, and they are threatening immediate legal proceedings.

9. The complainant is informed and believes, and therefore causes the court to be informed, that the business of a hotel, if prop-

erly conducted in and upon the premises aforesaid, would by reason of the favorable location of said premises be lucrative and productive of much profit; that if attachments and other processes at law can be levied upon the said premises and contents thereof at the instance of warring creditors in a race of diligence the said property and all the value that may be therein will be dissipated and wasted to the great detriment not only of your complainant but of all other creditors who may have claims against the same.

23 Wherefore, for the purpose of preserving the said property and business, and for the purpose of having the said business temporarily, at least, conducted in a proper and businesslike manner, and for the preservation of the assets of said defendant for the benefit of all creditors who may seek to avail themselves of the relief afforded by this bill, your complainant prays that a receiver may be appointed, who shall forthwith take possession of said premises and of the leasehold interest of the defendant therein and of all of the contents of said premises, by whatever name and description the same may be designated, and to hold the same until the further order of this court, and to continue the said business upon such terms and upon such directions as this honorable court may from time to time devise and give, and ultimately to wind up the said business and to make such sale or other disposition of the said leasehold interest in said premises and of the business conducted therein and of the assets and properties belonging to said defendant and found upon said premises as this honorable court shall direct.

To the end, therefore, that said defendant may be restrained and enjoined from disposing of the said leasehold interest in said premises, or of any interest therein, and may be further restrained and enjoined from disposing of any of the assets of said business or contents of the premises aforesaid, and that said defendant may render an accounting to your complainant, and for such — and other relief as to this honorable court may seem proper, your complainant prays that a gracious writ of subpœna may be issued out of this hon-

24 orable court, addressed to this defendant, James Barton Key, requiring and commanding him to appear herein at a day to be fixed by this court to show cause why he should not be perpetually enjoined and restrained and why a receiver should not be appointed as prayed.

And complainant will ever pray, &c., &c., &c.

JAMES P. SCOTT,
Solicitor for Complainant.

F. D. McKENNEY,
J. S. FLANNERY,
Solicitors for Complainant.

DISTRICT OF COLUMBIA, *ss:*

I, James P. Scott, being first duly sworn, do depose and say that I have read over the foregoing and annexed bill of complaint and know the contents thereof, and that the statements therein contained

made of my own knowledge are true, and those made upon information and belief I believe to be true.

JAMES P. SCOTT.

Subscribed and sworn to before me this 4th day of February, A. D. 1901.

AYLETT T. HOLTZMAN,
[SEAL.] *Notary Public, D. C.*"

F. W. DAW, a witness on behalf of the plaintiff, testified that he has been for three or four years last past a paper-hanger and decorator; that up to the 28th day of February, 1901, he was a member of the firm of Daw & Dickson. At present he is engaged in business on his own behalf; that he did work in the Hotel Barton in the latter part of November, 1900; that his contract for such work was made with Mr. Key; that he never saw Mr. Scott except
25 on one occasion when he was showing Mr. Key some samples of wall-paper, and a gentleman came into the room; Mr. Key introduced this gentleman to him in the following words: "Mr. Daw, this is Mr. Scott, my backer; Mr. Scott, this is Mr. Daw, our paper-hanger." Witness went on showing the samples of paper, and the gentleman who had been introduced as Mr. Scott presently said, "Jim, I don't like that paper. I would sooner have that paper," mentioning some other paper witness was showing him at the time; witness does not recollect whether Mr. Scott took any further part in the selection of the papers or not.

JAMES BARTON KEY, being called as a witness on behalf of the plaintiff, testified that he is one of the defendants in this case; that the letter heretofore introduced in evidence from himself to Mr. Scott was taken by him to Mr. Scott's room by witness and left on Mr. Scott's bureau; witness told Mr. Scott that it was a letter regarding the proposition he had made to Scott for the loan of money; Mr. Scott never had any further conversation with witness about the letter, but he went on his bond to secure the rent of the hotel and advanced the money; at the time of opening the hotel witness was without means, and the hotel was opened entirely on the money loaned to witness by Scott; that about February of the following year Mr. Scott and witness had a falling out. Scott demanded of witness to know what he (witness) was going to do in order to secure Scott the money that he had loaned to witness; at the same time Scott said he wanted to know whether, provided he got some
26 experienced hotel man who could do better with it, witness was willing to let him take witness' place, and said he had one who was willing to come in; he also said that he thought it would be a good idea to have some man more experienced in the hotel business than was witness in charge of the hotel as manager; witness declined to assent to such suggestion.

(Mr. PRENTISS:)

Q. As a matter of fact, did he not demand that you should sign over the lease and get out?

A. He did not.

Q. Just state what his demand was.

A. As nearly as I can recollect, he thought it would be a good idea to have some man more experienced in the hotel business in there. He was still willing that I should be there and retain some interest, which we could agree upon in some way or other. If this other man was willing to come in and take my place, he was willing to accept it, provided I would give him the direction of matters; and I declined to agree to it.

* * * * * * *

(Mr. PRENTISS:)

Q. Do you recollect talking with Mr. Clarke, about that time after you had some words with Mr. Scott?

A. I saw Mr. Clarke a great many times.

Q. You and your counsel were both given notice to produce a letter frrom Mr. Scott, referred to in a conversation that you had with him. Have you that letter?

A. No, sir, I have no such letter.

Q. You say you have not such a letter now?

A. No; there was no such letter in existence. It was a letter—I spoke to Mr. Clarke about a little scrap of paper written about some friends of his who got some rooms that were freshly painted. He heard of it and wrote me a little note about it—somebody that he had recommended to come down there—some Philadelphia people.

Q. That was the note you referred to in your conversation with Mr. Clarke?

A. Yes.

Q. Have you that little slip?

A. No, I have not; I didn't keep it.

Q. That, I believe, was signed "Your partner, James P. Scott"?

A. No, it was not signed that way. There was some allusion to partner, but it was not signed "Your partner, James P. Scott." I forget just how it was signed, but it was something about "partner." It used the word partner, but it was not signed that way. It was written in a paragraph right through. It was not signed as partner. He said that we had been talking about having a very precise and nice hotel, and all that, and he wrote to say that he thought this was not quite the idea of running a hotel on the style of the Bellevue, to have people who came there put into rooms that were freshly painted. I forget just how it was worded.

The witness having produced the guests' register of the Hotel Barton, pursuant to notice served upon him by the attorney for the plaintiff, stated that Mr. Scott's name did not appear anywhere upon said register, nor upon the transient guests' ledger.

27

Thereupon, upon cross-examination, the witness testified that Mr. Scott came to the Hotel Barton at his request and as his guest a few days before the hotel was opened for the reception of guests. At the time of the opening of the hotel Mr. Scott was sick and confined

to his room, and witness reserved the first line on the guests' register for the registration of Mr. Scott's name, saying to the first man who registered to "leave a place for my first guest, Mr. Scott, at the top of the page." Witness invited Mr. Scott to stop at the Hotel Barton during the opening, so far as his rooms were concerned, as witness' guest. Mr. Scott paid cash for everything he got in the restaurant and at the bar until witness told him not to pay cash, but to sign regular charge checks, which could be kept together and the amount thereof could be charged against the money which witness owed to him. This was done for a long time. These checks so signed by Mr. Scott were kept by witness until he left the hotel, just before the receivers took charge. Witness does not know what has become of them since. The letter introduced in evidence expresses the relationship between Mr. Scott and himself with respect to the business of the hotel, and their relations in that regard were not otherwise than as expressed in said letter. With respect to the clause in the letter to the effect that "the finances of the hotel shall be handled by a treasurer and cashier to be appointed and approved by you," witness testified that a lady, Mrs. Page, was brought on from New York, but she never went
28 actually to work, because the books were being prepared for her by an expert book-keeper; that she never took hold of any of the business of the hotel. Until witness went away she had never handled any money of the hotel. Witness left the hotel the first Saturday in February, and went to Baltimore to spend Sunday. He was taken sick while there, and on the next day was compelled to go to a hospital for medical aid, and did not return to Washington until the following Monday week. With respect to the clause of the letter to the effect that "all payments shall be made only on the joint checks of said cashier and myself" (meaning witness), witness states that no payments were made on such joint checks; that he, witness, signed all checks individually; that there were no profits received by him at any time from the business.

Attorney for plaintiff thereupon read in evidence a letter from James P. Scott to W. B. Moses and Sons in the following words and figures:

"J. Barton Key, prop.—Barton's, formerly Welcker's, on the European plan.

Tel. 2557.

WASHINGTON, D. C., *December 22nd*, 1900.

W. B. Moses, 11th & F Sts. N. W., city.

GENTLEMEN: Mr. James Barton Key, with whom I am financially interested in the rebuilding and refitting of Barton's new hotel, formerly the Wellington, informs me that he is about to pur-
29 chase from you a bill of goods consisting of carpets, rugs and various other house-furnishing materials, which bill will amount to something between eight hundred and fifteen hundred dollars, and Mr. Key tells me that he has arranged with you to pay

you one-quarter of the amount of the bill in cash, on which account he has already paid you $250.00, and for the balance he is to give you three equal payments in notes endorsed by me at 30 days, 60 days and 90 days, dating January 15th.

I write this to say to you that when the goods are delivered and the notes are prepared by your firm and Mr. Key, I will, as requested by Mr. Key, endorse the same.

Very truly yours, JAMES P. SCOTT."

Thereupon JAMES BARTON KEY, being recalled for further cross-examination, produced a ledger belonging to the Hotel Barton, and stated that the same was the first ledger used in that hotel; that said ledger contained an account with James P. Scott, in which he was charged with cash items beginning on the 12th day of December, 1900, and from time to time until January 28th; that the charges made against Mr. Scott, and appearing upon said ledger, amounted to $281.91.

Thereupon, the attorney for the plaintiff having announced the testimony on behalf of the plaintiff closed, the attorney for the defendant Scott moved the court to direct the jury to return a verdict in favor of the defendant Scott; which motion was granted by the court and an announcement made by the court in the following words: "I shall direct the jury, when I come to charge them in this case, to return a verdict for Scott."

30 Thereupon the attorney for the defendant Key moved the court to direct the jury to return a verdict in favor of the defendant Key also, on the ground that the suit of the plaintiff was against the defendants Key and Scott as copartners, and it appearing from the proof as declared by the court that no copartnership existed between the defendants, therefore no judgment could be rendered against the defendant Key in the pending proceedings; which motion the court overruled, and to which action of the court the attorney for the defendant Key then and there duly excepted, and such exception was noted upon the minutes of the trial justice.

Thereupon the court instructed the jury as follows:

"GENTLEMEN OF THE JURY: In view of the conclusion reached by the court as the legal effect of the testimony which has been submitted to you, the court instructs you in this case to return a verdict for the defendant Scott and against the defendant Key. The undisputed facts make it proper that that character of verdict should be rendered. Your verdict should be in favor of the plaintiff Roberts against the defendant Key for $196 30."

Mr. BLAIR: "I reserve an exception to the instructions of the court. It seems to me that in this particular case we are entitled to a special finding by the jury that there is no partnership in this case."

The COURT: "It seems to me that you find your ground of
31 exception in my instruction to the jury. I have in effect told the jury that the court finds as matter of law that from

the undisputed facts in the case there is no partnership; and therefore I have instructed the jury to return a verdict in favor of the defendant Scott on that ground. I do not see why there should be a special verdict."

Mr. BLAIR: "We think that is sufficient, and if put in that form we have no objection to it."

Mr. MCKENNEY: "I think the instruction should be that, it appearing from the undisputed evidence in this case that there was no partnership relation between the defendants to this action, the verdict of the jury upon the pleadings and proof should be for the defendants."

The court having further instructed the jury to return a verdict for the defendant James P. Scott, and also to return its verdict in favor of the plaintiff against the defendant James Barton Key in the sum of $196.30, the attorney for the defendant James Barton Key noted an exception to the ruling of the court, in so far as it directed the jury to return a verdict in favor of the plaintiff and against said defendant Key for the sum mentioned, both of which exceptions were duly entered upon the minutes of the trial justice before the jury returned its verdict in accordance with the court's instruction.

Be it further remembered that the foregoing was all of the evidence tendered in the above cause in the course of the trial,
32 and that the separate and several exceptions taken by counsel, as hereinbefore set forth, were taken before the rendition of the verdict herein.

Wherefore the attorney for the defendant James Barton Key then and there prayed the court and now prays the court to sign and seal this his bill of exceptions, and the attorney for the plaintiff Roberts objects to the signing and sealing of the same upon the ground that there is no right of appeal allowed by law from the judgment of this court in this cause; which objection being overruled by the court and an exception to such action being first duly noted, this bill of exceptions is accordingly signed and sealed this 28th day of April, A. D. 1902.

T. H. ANDERSON, [SEAL.]
Associate Justice.

Settled by counsel this 28th day of April, 1902—
HENRY P. BLAIR,
Attorney for Defendant Key,
F. D. MCKENNEY,
Attorney for Defendant Scott,
W. C. PRENTISS,
Attorney for Plaintiff,

without prejudice to objection noted above.

33 *Motion to Extend Time for Filing Record.*

Filed April 29, 1902.

In the Supreme Court of the District of Columbia, the 29th Day of April, A. D. 1902.

WILLIAM F. ROBERTS, Plaintiff,
vs.
J. S. BARTON KEY and JAMES P. SCOTT, Co-partners, Defendants. } At Law. No. 44625.

Now comes the defendant J. S. Barton Key, above named, and moves this honorable court to extend the time for filing the record on appeal in the Court of Appeals of the District of Columbia for thirty (30) days from this date, and as ground for such motion respectfully shows that it has been impossible to prepare the record in this cause up to this time, pending the settlement of the bill of exceptions herein.

H. P. BLAIR,
Attorney for Defendant J. S. Barton Key.

Order Extending Time to File Record.

Filed April 29, 1902.

In the Supreme Court of the District of Columbia, the 29th Day of April, A. D. 1902.

WILLIAM F. ROBERTS, Plaintiff,
vs.
J. S. BARTON KEY and JAMES P. SCOTT, Co-partners, Defendants. } At Law. No. 44625.

34 Upon consideration of the motion of the defendant J. S. Barton Key, heretofore filed herein, it is, this 29th day of April, A. D. 1902, ordered that the time for filing the transcript of record on appeal in the above-entitled cause be, and the same is hereby, extended for thirty (30) days from this date.

T. H. ANDERSON,
Associate Justice, D. C.

Directions to Clerk for Preparation of Record.

Filed May 5, 1902.

In the Supreme Court of the District of Columbia, the 5th Day of May, 1902.

ROBERTS vs. KEY. } At Law. No. 44625.

The clerk of said court will copy in the transcript of record for the Court of Appeals the following:

Original writs issued by the justice of the peace;

Itemized bill of W. F. Roberts, showing pencil-marks therein;

Certificate of proceedings before justice of the peace, and make a memorandum showing the appeal to the S. C. D. C., trial, verdict, judgment in S. C. D. C., and appeal to Ct. of Appeals & bond.

HENRY P. BLAIR,
Att'y for J. S. Barton Key, Appellant.

35 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 34, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 44625, at law, wherein William F. Roberts is plaintiff and James S. Barton Key *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 12th day of May, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1220. James S. Barton Key, appellant, *vs.* William F. Roberts. Court of Appeals, District of Columbia. Filed May 14, 1902. Robert Willett, clerk.

36 In the Court of Appeals.

JAMES S. BARTON KEY, Appellant,
vs.
WILLIAM F. ROBERTS. } No. 1220, April Term, 1902.

Now comes the appellee by his attorney and showing to the court that the appellant's appeal herein is from a joint judgment against him and the United States Fidelity and Guaranty Company rendered by the supreme court of the District of Columbia in a cause pending therein on appeal from a judgment of a justice of the peace, moves the court to dismiss the said appeal to this court, for the reasons:

First. That the appeal is defective in not joining the said United States Fidelity and Guaranty Company as appellant and no proceeding by way of summons and severance having been had.

Second. That this court has no jurisdiction on appeal from a judgment of the court below in such cases.

W. C. PRENTISS,
Attorney for Appellee.

(Endorsed:) No. 1220. Court of Appeals, D. C., April term, 1902. James S. Barton Key, appellant, *vs.* Wm. F. Roberts. Motion of appellee to dismiss appeal. Court of Appeals, District of Columbia. Filed Jun- 3, 1902. Robert Willett, clerk.

37 THURSDAY, *June 5th, A. D.* 1902.

JAMES S. BARTON KEY, Appellant,
vs.
WILLIAM F. ROBERTS. } No. 1220.

The motion to dismiss the appeal in the above-entitled cause was submitted to the consideration of the court by Mr. W. C. Prentiss in support of motion, and leave is hereby granted him to file brief in cause No. 1199 on motion to dismiss.

38 JAMES S. BARTON KEY, Appellant,
vs.
WILLIAM F. ROBERTS. } No. 1220.

(Mr. Chief Justice ALVEY delivered the opinion of the court:)

The motion to dismiss the appeal in this case must prevail. The action was originally brought before a justice of the peace of this District to recover the sum of $196.30. The case was regularly tried by the justice of the peace, and a judgment was rendered for the plaintiff, and the defendants appealed to the supreme court of the District, where the appeal was tried *de novo* before a jury. The trial resulted in a verdict and judgment in favor of the plaintiff against one of the defendants, but in favor of Scott, the other defendant; and the defendant Key has appealed to this court.

This motion to dismiss is controlled and must abide the decision just made by this court in the case of *Groff vs. Miller*, in which it is held that section 82 of the new Code is in full force and operation, and not nullified by section 226 of the Code. The appeal must therefore be dismissed, *and it is so ordered.*

Appeal dismissed.

39 TUESDAY, *June 24th, A. D.* 1902.

JAMES S. BARTON KEY, Appellant,
vs.
WILLIAM F. ROBERTS. } No. 1220, April Term, 1902.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the supreme court of the District of Columbia, and on a motion to dismiss which was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that this cause be, and the same is hereby, dismissed with costs, for the want of jurisdiction.

Per MR. CHIEF JUSTICE ALVEY.

June 24, 1902.

40 Court of Appeals, District of Columbia, April Term, A. D. 1902.

JAMES S. BARTON KEY, Appellant,
vs.
WILLIAM F. ROBERTS, Appellee. } No. 1220.

Appeal from the supreme court of the District of Columbia.

Motion to Set Aside Judgment and Grant a Rehearing Herein.

Now comes J. S. Barton Key, by his attorneys, and respectfully moves this honorable court to set aside the judgment heretofore rendered herein on motion to dismiss this cause and to grant a reconsideration thereof, and as ground of such motion respectfully shows that this honorable court dismissed the appeal in this cause for want of jurisdiction, on the authority of its decision in the case of Groff *vs.* Miller, No. 1199, said decision turning upon the construction placed by this honorable court upon the conflicting provis-
41 ions of sections 82 and 226 of the Code of Laws for the District of Columbia, the court holding that the reasonable interpretation of such conflicting provisions necessitated the conclusion that this court had jurisdiction to hear and determine cases originating before justices of the peace only where said causes had been moved into the supreme court of the District of Columbia from the justice of the peace by certiorari and not by appeal.

By an act "To amend an act entitled 'An act to establish a Code of Law for the District of Columbia,'" which became a law on the

1st day of July, 1902, the Congress expressly provided that the Code of Law for the District of Columbia should be amended in the following particulars:

1. By striking out the whole of section 82;

2. By striking out the quotation marks in the third and fourth lines of section 226;

The effect of such amendments being to strike out the provision heretofore occurring in the Code to the effect that:

"In no case appealed from a justice of the peace shall there be a further appeal from the judgment of the supreme court,"

and leaving the positive law upon this subject as follows:

"Any party aggrieved by any final order, judgment or decree of the supreme court of the District of Columbia or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said Court of Appeals and upon such appeal the Court of Appeals shall review such order, judgment or decree, and affirm, reverse or modify the same, as shall be just, except as provided in the following sections * * *."

Such amendments by the Congress in the manner and form in which they were made must be regarded as a legislative in-
42 terpretation by the Congress itself of its purposes and intentions respecting the conflicting provisions covering appeals from justices of the peace, as the same heretofore appeared in the Code, and must reasonably be taken as an express declaration by Congress that it was its intention, as expressed in former section 226 of the Code, to permit an appeal to the Court of Appeals from the judgment of the supreme court of the District in any and all cases appealed to said supreme court from a justice of the peace, thereby including in the privilege of appeal, as seems only natural and proper, cases technically appealed from justices of the peace as well as those removed into the supreme court by certiorari.

In view of this express declaration, it is respectfully submitted that the right intended to be conferred by Congress, as declared in the amendments, should not be denied to the appellant in this case, but that he should be permitted to have the benefit of the judgment of this court upon a question of general moment and of considerable gravity to himself.

Had this case been permitted to come before this honorable court in its regular order, there is no doubt that the appellant would have been accorded the full benefit to be derived from the amendments to the Code above referred to; and as the case is still within the control of the court, it is respectfully submitted that the summary proceedings on motion to dismiss should not be permitted to deny a right so expressly conferred.

HENRY P. BLAIR,
FREDERIC D. McKENNEY,
J. S. FLANNERY,
Attorneys for Appellant.

43

JAMES S. BARTON KEY
vs.
WILLIAM F. ROBERTS. } No. 1220.

Motion for rehearing of motion to dismiss appeal.

Mr. Chief Justice ALVEY delivered the opinion of the court:

For the same reasons that the motion for rehearing was overruled in the case of *Groff vs. Miller*, the motion in this case is overruled—the ground of the motions in both cases being the same.

Motion for rehearing overruled.

44

WEDNESDAY, *October 15th, A. D.* 1902.

JAMES S. BARTON KEY, Appellant,
vs.
WILLIAM F. ROBERTS. } No. 1220, October Term, 1902.

On consideration of the appellant's motion for a rehearing in the above-entitled cause, it is by the court now here ordered that said motion be, and the same is hereby, overruled with costs.

Per MR. CHIEF JUSTICE ALVEY.

October 15, 1902.

45

Court of Appeals, D. C.

J. S. BARTON KEY, Appellant,
vs.
W. F. ROBERTS. } No. 1220, Oct. Term, 1902.

OCTOBER 23, 1902.

SIR: In making up the transcript of the record in the above case for use in the Supreme Court of the United States please include therein a transcript of all proceedings had in the Court of Appeals, together with copies of the opinion of the court delivered by Mr. Chief Justice Alvey in the case of Groff *vs.* Miller, No. 1199, on June 23, 1902, and October 15, 1902.

HENRY P. BLAIR,
F. D. McKENNEY,
Attorneys for J. S. Barton Key.

To Robert Willett, Esqr., clerk Court of Appeals, D. C.

(Endorsed:) No. 1220. James S. Barton Key, appellant *vs.* William F. Roberts. Directions to clerk for preparation of transcript. Court of Appeals, District of Columbia. Filed Oct. 23, 1902. Robert Willett, clerk.

46 DILLER B. GROFF, Appellant, v. FRANCIS MILLER. } No. 1199.

(Filed June 23, 1902.)

(Mr. Chief Justice ALVEY delivered the opinion of the court:)

In this case there is a motion entered to dismiss the appeal, upon the ground that there is no jurisdiction in this court to hear and decide the case.

The case was instituted before a justice of the peace by whom it was tried and determined, and a judgment was rendered for the plaintiff. From that judgment an appeal was taken by the defendant to the supreme court of this District, where, after trial *de novo* before a jury, a judgment was rendered in favor of the plaintiff for $96.55, and from which judgment the defendant has taken an appeal to this court. The plaintiff in the judgment contends that the appeal to and determination by the supreme court of the District is final, and that there can be no further appeal to this court. If that contention be well founded, of course, this appeal must be dismissed.

The determination of this motion to dismiss involves a question of the proper construction of several of the sections of the new Code enacted by Congress for this District; the sections involved being those relating to civil actions instituted before justices of the peace, and appeals therefrom. The act of Congress of March 3, 1901, ch. 854 (31 St. p. 1189) is entitled "An act to establish a code of law for the District of Columbia," and whereby it is declared "That the following is hereby enacted and declared to be a code of law for the District of Columbia, to go into effect and operation from and after the first day of January, in the year 1902." The code thus enacted is divided into chapters, with many subdivisions and titles,
47 to embrace the contents of the entire enactment.

In chapter 1 of this Code, under title, *justices of the peace*, there are several sections that have more or less bearing upon the question presented. They are as follows:

"SECTION 7. Jury trials.—Trial by jury before justices of the peace is hereby abolished."

Section 8 provides, "That in all cases of *concurrent jurisdiction* the *defendant* may remove the case for trial into the supreme court of the District by a writ of *certiorari* (to be awarded by said cou[illegible] one of the justices thereof, upon a petition under oath, the form and substance whereof shall be prescribed by said court)."

"SECTION 9. Jurisdiction.—The said justices of the peace shall have jurisdiction in all civil cases in which the amount claimed to be due for debt or damages arising out of contracts, expressed or implied, or damages for wrongs or injuries to persons or property, does not exceed three hundred dollars, * * * and said jurisdiction shall be exclusive when the amount claimed for debt or damages, or the value of personal property claimed does not exceed fifty dollars, and *concurrent* with the said supreme court when it exceeds fifty dollars.'

"SECTION 30. Appeal.—Where the debt or demand, or the value o

personal property claimed, exceeds five dollars, and in actions for the recovery of possession of real estate, as aforesaid, either party who may think himself aggrieved by the judgment or other final order of a justice of the peace, may appeal to the supreme court of the District."

Under title, Supreme Court of the District of Columbia, it is provided by—

"SECTION 80. That on such appeal, the circuit court shall, in a summary way, hear the case *de novo* upon the proofs and allegations of the parties and determine the same according to the law and the equity and the right of the matter; but either party may demand a trial by jury."

48 "SECTION 82. In *no case appealed* from a justice of the peace shall there be *any further appeal* from the judgment of the circuit court." This is clear and positive.

But under title, Court of Appeals, occurs this provision:

"SECTION 226. Jurisdiction.—Any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia, or of any justice thereof, 'including any final order or judgment in any case heard on appeal from a justice of the peace,' may appeal therefrom to the said Court of Appeals;" and upon such appeal, &c.

These are all the provisions that would appear to have any relation to the question under consideration; and from them it would appear that there is difficulty in reconciling and making consistent section 82 with the provision contained in section 226, if we adhere strictly to the literal terms employed in the latter section. Indeed, it is clear, both provisions, according to the strict letter of the statute, will not stand together; one must yield and become a nullity in order to give the other effect, if we adopt the literal meaning of the terms employed in section 226. Congress certainly did not intend to produce any such result in the enactment of these provisions, but, on the contrary, intended each provision to have effect. We think, however, the apparent conflict and difficulty, growing out of the language employed in section 226, may be removed, and the sections reconciled and made consistent, by the application of a few well-established rules of construction of statutes.

In the first place, these provisions of the Code must be construed in the light of the pre-existing law, the reason of the matter, and also in view of the consequences that would be produced by adopting the contention of the appellant; that is to say, that the provision of section 226, being the later provision of the Code, should prevail, to the exclusion of the positive provision contained in section 82. This theory of the last expression of the legislature is the only argument that has been or can be invoked in support of the contention of the appellant. By that argument, the provision

49 so clearly and positively expressed by section 82 is utterly nullified, as if it were no part of the Code. Was this the intention of Congress, and should such be the construction? Why thus nullify and strike out section 82, in order to give force and literal effect to the provision contained in section 226? While

there may be some cases found that give countenance to such contention, yet the decided weight of decision is, that such construction should never be adopted except upon the most urgent and irresistible reason. It would seem to be well settled that a code, or body of revised laws, should be regarded as a system of contemporaneous acts, as established *uno flatu;* or as a simultaneous expression of the lawmaker. Its various sections relating to the same subject should, if practicable, be construed together, as one; as one act or chapter, or as continuous sections of the same act; and one chapter is to be read with another, relating to the same subject, as one body of law, though collected from independent laws of previous enactment, originally passed at different times and re-enacted by a revisory act. If possible, the various portions of such code or revision must be so construed as to harmonize with one another. Its general system of legislation upon the subject-matter should be taken into view, and any particular article construed in conformity therewith, unless an intention to depart from it be clearly shown; and definitions contained in it are to be construed with reference to its positive enactments *in pari materia.* Endlich, on Inter. of Sts. sec. 40, and cases there cited.

It is an established rule in the exposition of statutes, says Chancellor Kent, "that the intention of the lawgiver is to be deduced from a view of the whole, and of every part of a statute, taken and compared together. The real intention, when accurately ascertained, will always prevail over the literal sense of the terms. When the expression in a statute is special or particular, but the reason is general, the expression should be deemed general. *Scire leges, non hoc est verba earum tenere sed vim ac potestatem,* and the reason and intention of the lawgiver will control the strict letter of the law, when the latter would lead to palpable injustice, contradiction, and absurdity." 1 Kent Com. 461–'2. And as illustrative of this principle of construction, it is stated by the same learned author, that a saving clause in a statute will be rejected, when it is directly repugnant to the purview or body of the act, and could not stand without rendering the act inconsistent and destructive of itself. *Ib.*

And so it is an established rule, that where words are obscure or doubtful, the intention of the legislature is to be resorted to in order to find the meaning of the words as employed in the statute. A thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute, is not within the statute unless it be within the intention of the makers of it. *People vs. Utica Ins. Co.*, 15 John., 358, 380. And so therefore, that which is within the letter of the statute, may sometimes not be within the statute, not being within the intention of the makers. "If laws and statutes seem contrary to one another, yet if by interpretation they may stand together, they shall stand;" and where two laws only so far disagree or differ, as that by any other construction they may both stand together, the rule that *Leges posteriores, priores contrarias abrogant,* does not apply, and the latter is no repeal of the former.

Roll. Rep. 90, 91; *2d Co. Rep.* 5, 6; *19th Vin. Abs.* 519, 525; *4 Gill & John.*, 152, *Canal Co. vs. Railroad Co.*

The rule is very clearly stated by Mr. Chief Justice Fuller, speaking for the Supreme Court, in the case of *Petri vs. Commercial Bank*, 142 U. S., 644, 650. In that case, he said: "The rule that every clause in a statute should have effect, and one portion should not be placed in antagonism to another, is well settled; and it is also held that it is the duty of the court to ascertain the meaning of the legislature from the words used and the subject-matter to which
51 the statute relates, and to restrain its operation within narrower limits than its words import, if the court is satisfied that the literal meaning of its language would extend to cases which the legislature never intended to include in it." See also case of *Bennier vs. Bennier*, 147 U. S. 246.

It is difficult to suppose that it was ever the intention of Congress, by the adoption of section 226 of the Code, to give the right of appeal to this court in all cases of appeal from justices of the peace to the supreme court of this District; even though the amount in controversy barely exceeded five dollars. Yet the words employed in the section, if taken literally, would seem to confer the right. Where the demand in controversy exceeds fifty and does not exceed three hundred dollars, the suit therefor- may be brought either before a justice of the peace or in the supreme court of the District, and if brought before a justice of the peace, the *defendant* may remove the case to the supreme court of the District by *certiorari* for trial in the first instance, or he may have a trial before the justice of the peace, from whose judgment either party may appeal to the supreme court of the District. If the case be removed into the supreme court by *certiorari*, and be there tried, and judgment rendered, then either party may appeal to this court. If the words in section 226, instead of being read as applying to appeals strictly as such from justices of the peace, be read as applying to final orders or judgments in any case heard on return of *certiorari* by or from a justice of the peace, the apparently conflicting provisions of sections 82 and 226 would be made to harmonize and be rendered consistent, the one with the other, and would consist throughout with the general scheme of the statute relating to civil actions brought before justices of the peace. And this, we think, is the fair and rational construction to be placed upon the terms employed in section 226; as thereby all the provisions of the Code relating to this subject are given full effect and operation, and none rendered null and
of non-effect, by reason of the apparent conflict between
52 sections 82 and 226, such as would be the case if the contention of the present appellant were sustained. We know that, in popular understanding, the proceeding by *certiorari* is regarded as in its nature an appellate proceeding, and in many jurisdictions it is made so in reality. Considering the entire subject, and all the provisions of the Code relating thereto, we think it a reasonable inference that the proceeding referred to in section 226, as originating with and coming from a justice of the peace into the Sapreme Court for trial and judgment, is the proceeding authorized to be brought

therein by *certiorari*, and not technically an appeal. By this construction, effect is given to the provision incorporated in section 226, and section 82 is allowed to stand and have operation, whereby it is declared, in accordance with the pre-existing law, that "in no case appealed from a justice of the peace shall there be any further appeal from the judgment of the circuit court."

This being our conclusion, it follows that this appeal is improperly here, and it must therefore be dismissed; *and it is so ordered.*

Appeal dismissed.

53 DILLER B. GROFF *vs.* FRANCIS MILLER. } No. 1199.

(Filed October 15, 1902.)

Motion for rehearing on motion to dismiss appeal.

Mr. Chief Justice ALVEY delivered the opinion of the court:

There is a motion made in this case for rehearing on motion to dismiss appeal, and which is founded upon the recent act of Congress of June 30, 1902, providing various amendments to the District Code. By this amendatory act sections 81 and 82 of the Code are repealed, without substituting any other provisions in their stead; and it is supposed that this is a congressional construction of section 226 of the Code, to the effect that the right of appeal was intended to be secured to this court from the supreme court of the District from any final order or judgment in any case heard on appeal from a justice of the peace. In disposing of the motion to dismiss the appeal in this case, we so construed the apparently conflicting sections 82 and 226 of the Code as to give effect to both sections, as we were required to do by established canons of construction. The Code was adopted as an entirety, and as a single legislative act, and no one part or section of it could in reason be said to be the last expression of legislative will. If in the amendatory and repealing act, passed after the appeal was disposed of by this court, congressional construction is to be accepted as to the meaning originally intended by section 226, then the fact that it was deemed necessary to repeal section 82, in order to give force and effect to section 226, it would follow that while both sections remained unrepealed they neutralised and frustrated each other, and neither could be allowed effective operation. This would leave the law as it existed prior to the adoption of the Code in full force, that is to say without any effect-

54 ive statutory right of appeal to this court, in cases like the present; and that being the case, the appeal taken in this case could not be sustained. In any aspect, therefore, this appeal would have to be dismissed.

Motion for rehearing overruled.

55 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 54 inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals (together with a copy of the opinion of said court in Groff *vs.* Miller, No. 1199) in the case of James S. Barton Key, appellant, *vs.* William F. Roberts, No. 1220, October term, 1902, as the same remain upon the files and records of said Court of Appeals.

Seal Court of Appeals, District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 26th day of November, A. D. 1902.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

[redacted]

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

[redacted]

[redacted]

JAMES S. EASTON KEY, APPELLANT,

vs.

WILLIAM F. ROBERTS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

[redacted]

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

APRIL TERM, 1902.

No. 1220.

JAMES S. BARTON KEY, APPELLANT,

vs.

WILLIAM F. ROBERTS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MAY 23, 1902.

In the Court of Appeals of the District of Columbia.

JAMES S. BARTON KEY, Appellant,
vs.
WILLIAM F. ROBERTS. } No. 1220.

a Supreme Court of the District of Columbia.

WILLIAM F. ROBERTS, Plaintiff,
vs.
JAMES S. BARTON KEY and JAMES P. SCOTT, Copartners, Defendants. } No. 44625. At Law.

UNITED STATES OF AMERICA, *District of Columbia,* } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Writ.*

Filed April 18, 1902.

44625.

DISTRICT OF COLUMBIA, *ss:*

The President of the United States to Aulick Palmer, U. S. marshal, Greeting:

Summon J. S. Barton Key and James P. Scott, copartners, to be and to appear before me, the subscriber, a justice of the peace in and for the District aforesaid, on the 9th day of Feb., A. D. 1901, at 10 o'clock a. m., to answer unto the complaint of William F. Roberts in a plea of debt of $196.30.

Given under my hand and seal this 5th day of Feb., A. D. 1901.

A. S. TAYLOR, *J. P.* [SEAL.]

Marshal's Return.

8th day of Feb'y, 1901, personally summoned as within directed as to James P. Scott.

AULICK PALMER,
U. S. Marshal.

2 *Writ.*

Filed April 18, 1901.

44625.

DISTRICT OF COLUMBIA, ss:

The President of the United States to C. V. Mallet or any qualified constable, Greeting:

Summon J. S. Barton Key and James P. Scott, copartners, to be and to appear before me, the subscriber, a justice of the peace in and for the District aforesaid, on the 9 day of Feb., A. D. 1901, at 10 o'clock a. m., to answer unto the complaint of William F. Roberts in a plea of debt of $196.30.

Given under my hand and seal this 5 day of Feb., A. D. 1901.

A. S. TAYLOR, *J. P.* [SEAL.]

Constable's Return.

FEB. 13TH, 1901.

Summoned as within directed as to J. S. Barton Key.

CHARLES V. MALLET, *Constable.*

3 *Itemized Bill of W. F. Roberts.*

Filed April 18, 1901.

J. S. Barton Key [and James P. Scott, copartners]* Dr., to W. F. Roberts, 730 15th street, Washington city. 44625.

1900.				
Dec. 1	To 200 letter & 200 ½ letter hdgs	3 50		
7	" 200 wine cards	1 50		
11	" 500 envelopes	2 50		
13	" sketch of arms	1 25		
15	" 1000 letter-headings	5 50		
	" 1000 ½ letter-hdgs	3 50		
21	" 1000 follow sheets	4 00		
24	" 1000 wine cards	2 50		
31	" 200 circulars, envs. & autograph	7 00		
			31 25	
1901.				
Jan. 8	" 100 invitations & envelopes	3 00		
	" 75 dinner slips	3 00		
9	" 50 special evening cards	4 50		
10	" 100 dinner slips, 2nd lot	3 00		
11	" 12 special menus, Mrs. May	2 00		
	" 100 cloak checks	1 00		
12	" 100 " "	1 00		
	" 50 all-day bills	10 00		
14	" 25 breakfast bills	6 25		
	" 25 all-day bills & changing	5 50		
	" 1000 envelopes	3 00		
	" 4 cards, officers' breakfast	1 25		
15	" 1500 letter-headings	7 00		
	" 1500 note "	6 00		
	" 25 all-day bills & changing	5 50		[$1 pd. Marshal.]*

[* Words and figures enclosed in brackets in pencil in copy.]

		To 4 cards, officers' breakfast	1 25	
	16	" 1000 bills	3 25	
	17	" 1000 invitations, 850 envelopes	10 25	
	18	" 100 special booklets, breakfast	28 50	
	19	" crest	7 50	
		" 25 wine lists	9 00	
		" 100 special menus, 19th & 20th	1 75	
		" 100 cards, automobile service	2 25	
		" 30 special Sunday lunch	1 25	
				127 00
[1.65 pd.]*				158 25
[1.60 "]*				
4		Amount forward	158 25	
Jan.	19	To 50 night luncheon	1 25	
	25	" 200 circulars, 250 envelopes	4 25	
	26	" 12 wine lists	1 25	
		" 40 menus, newspaper men	2 50	
		" 8 special menus, Sat., 26th	1 00	
	28	" 1000 small bills	2 50	
	30	" 25 all-day bills	2 50	
		" 1000 6¾ envelopes	3 00	
		" *Carte du Jour*, 14 days	13 80	
				190 30
Feb.	2	" 25 special evening cards	1 50	
		" 50 all-day bills	3 00	
		" 40 menus, Lehigh	1 50	
				6 00
				196 30

[*Words and figures enclosed in brackets in pencil in copy.]

Memorandum.

April 9, 1901.—Appeal and appeal bond filed in justice's court.

5 *Certificate of Proceedings.*

Filed April 18, 1901.

In Justice's Court of the District of Columbia—Before Anson S. Taylor, a Justice of the Peace.

WILLIAM F. ROBERTS, Plaintiff,
vs.
J. S. BARTON KEY and JAMES P. SCOTT, Copartners, Defendants.

No. 48692. Action for Debt for $196.30. 44625.

Date.	Proceedings.
Feb. 5, 1901	Summons issued to C. V. Mallet, constable; also to Aulick Palmer, U. S. marshal; returned Feb. 8/01, summoned as within directed, personally as to Jas. P. Scott. Aulick Palmer, U. S. marshal. Feb. 9/01, plaintiff appeared by counsel, def'd't Scott by counsel, and case continued until Feb. 14/01, 2.30 p. m. Feb. 13/01, summons returned, summoned as within directed as to J. S. Barton Key. C. V. Mallet, constable. Feb. 13/01, subpœna issued for J. S. Barton Key and Chas. Dailey, witnesses for plaintiff; returned Feb. 14/01, summoned as within directed. C. V. Mallet, constable 1.60/100 costs. Feb. 14/01, continued until Feb. 19/01, 3 p. m.; again until Feb. 26/01 3 p. m.; again until Mar. 6/01, 3 p. m.; again until Mar. 13/01, 3 p. m.; again until Mar. 20/01, 3 p. m.; again until Mar. 27/01, 3 p. m.; again until April 3/01, 3 p. m.
April 3, 1901	Judgment for plaintiff after trial for $196.30/100 debt, on interest from Feb. 5, '01, with $6 60/100 costs. Notice of appeal given April 11/01. Undertaking on appeal filed and approved, with the United States Fidelity and Guarantee Co. as surety, 75c. costs. April 11/01, certification appeal, 50c. costs. A. S. TAYLOR, *J. P.* [SEAL.]

6 DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

I, Anson S. Taylor, one of the justices of the peace in and for the said county and District, do hereby certify that the foregoing is a true statement from my docket of all the proceedings had before me in the above cause, and that the annexed are all the original papers therein.

Given under my hand and seal this 11 day of April, A. D. 1901.

A. S. TAYLOR, *J. P.* [SEAL.]

Cost, paid by plaintiff, $6.60.
Cost, paid by defendant, $1.25.

Supreme Court of the District of Columbia.

Memorandum.

January 23, 1902.—Verdict for plaintiff against J. S. Barton Key, defendant, for $196.30.

7 Supreme Court of the District of Columbia.

FRIDAY, *February* 28, 1902.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

By Justice Anderson.

WILLIAM F. ROBERTS, Plaintiff,
vs.
JAMES S. BARTON KEY and JAMES P. SCOTT, Defendants. } At Law. No. 44625.

Upon hearing the motion for a new trial filed herein by the plaintiff, it is considered that said motion be, and hereby is, overruled and judgment on verdict ordered; therefore it is considered that the plaintiff recover against James S. Barton Key and the United States Fidelity and Guaranty Company, his surety, one hundred and ninety-six dollars and thirty cents ($196.30), being the money payable by them to the plaintiff by reason of the premises, together with his costs of suit, to be taxed by the clerk, and have execution thereof; and, further, it is considered that James P. Scott go thereof without day and recover against the plaintiff his costs of defense, to be taxed by the clerk, and have execution thereof.

8 *Order for Appeal.*

Filed March 7, 1902.

In the Supreme Court of the District of Columbia, the 7th Day of March, 1902.

WILLIAM F. ROBERTS, Plaintiff,
vs.
JAMES S. BARTON KEY and JAMES P. SCOTT, Copartners. } At Law. No. 44625.

The clerk of said court will please note an appeal to the Court of Appeals from the judgment entered in the above cause on February 28th, 1902, and issue citation.

HENRY P. BLAIR,
Attorney for J. S. Barton Key.

9 In the Supreme Court of the District of Columbia.

WILLIAM F. ROBERTS
vs.
JAMES S. BARTON KEY and JAMES P. SCOTT. } At Law. No. 44625.

The President of the United States to William F. Roberts, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause

therein under and as directed by the rules of said court, pursuant to an appeal filed in the clerk's office of the supreme court of the District of Columbia on the 7th day of March, 1902, wherein James S. Barton Key is appellant and you are appellee, to show cause, if any there be, why the judgment rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia.

Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 7th day of March, in the year of our Lord one thousand nine hundred and two (1902).

J. R. YOUNG, *Clerk*,
By W. E. WILLIAMS, *Ass't Clerk*.

Service of the above citation accepted this 14th day of March, 1902.

W. C. PRENTISS,
Attorney for Appellee.

10 *Memorandum.*

March 13, 1902.—$50 deposited in lieu of appeal bond.

Memorandum.

March 31, 1902.—Term prolonged 38 days to settle exceptions.

11 Supreme Court of the District of Columbia.

MONDAY, *April* 28, 1902.

Session resumed pursuant to adjournment, Chief Justice Bingham presiding.

* * * * * * *

WILLIAM F. ROBERTS, Plaintiff,
vs.
J. S. BARTON KEY ET AL., Defendants. } At Law. No. 44625.

Now again comes here the defendant J. S. Barton Key, by his attorney, and tenders to the court here his bill of exceptions taken during the trial of this cause, and prays that the same may be duly signed, sealed, and made part of the record, now for then, which is accordingly done.

12 *Bill of Exceptions.*

Filed April 28, 1902.

In the Supreme Court of the District of Columbia.

WILLIAM F. ROBERTS, Plaintiff,
vs.
J. S. BARTON KEY and JAMES P. SCOTT, Co-partners, Defendants. } No. 44625. At Law.

Bill of exceptions.

Be it remembered that the above-entitled cause came on for trial before Mr. Justice Anderson and a jury on January 20th, 1902, Mr. William C. Prentiss appearing on behalf the plaintiff, Mr. Henry P. Blair appearing on behalf of the defendant J. S. Barton Key, and Mr. F. D. McKenney and Mr. J. S. Flannery on behalf of the defendant James P. Scott.

Thereupon the plaintiff demanded that a jury be drawn, and, the attorneys for the respective defendants assenting thereto,
13 a jury was drawn, and, counsel for all parties having waived any and all objection to the manner in which said panel was made up or drawn, said jury was sworn.

And thereupon counsel for the plaintiff, to maintain the issues on his part joined, introduced evidence as follows:

WILLIAM F. ROBERTS, the plaintiff, as a witness in his own behalf, stated that his occupation was that of engraving and printing stationery; that he was acquainted with the defendant Key, but not with the defendant Scott; that he had had business dealings with the defendant Key in the way of supplying printed bills of fare, note-heads, and stationery for the Hotel Barton; that he had his books of original entry containing the account for such supplies in court; that all orders covering the different items of work and stationery were placed with him by Mr. Key; that the transcript of the account annexed to the writ in this case was a correct transcript from his ledger; that the account as so made up was rendered to Mr. Key and admitted by him to be correct.

Thereupon, on cross-examination by the attorney for the defendant Scott, the witness stated that the pencil writing on said transcript of account annexed to the writ in this case was in the handwriting of his attorney, Mr. Prentiss; that witness had never had any conversation with Mr. Scott in regard to the business covered by the account sued on at any time; that all orders were given to him by Mr. Key or by Mr. Key's chef; that all charges on his books of original entry and on his ledger relating to this account were entered in the name of "J. S. Key," "J. Bar-
14 ton Key," and "Hotel Barton;" that none of them were entered in the name of Mr. Scott, nor does Mr. Scott's name

appear in connection with such items on those books; the sole debtor's name on the ledger in connection with said items is that of J. S. Barton Key; that the typewritten transcript of the account annexed to the writ in this case is a correct copy of the ledger account, in so far as it is typewritten; that the words "and James P. Scott, copartners," which are written on the account in lead pencil, were written thereon by Mr. Prentiss after the time the suit was brought or just about the time; that this account was made up about the time the hotel went into the hands of the receiver—that is, about February 4th or February 5th.

Witness also testified on cross-examination that the printing done by him included envelopes and letter-heads, wine cards, cloak checks, and the like; that on some of these papers no name appeared except the name of the hotel, and that on the letter-headings on which Mr. Key's name appeared his name was followed by the word "proprietor;" that no payments had been made on the present account; that prior to the opening of the present account Mr. Key had a small account for stationery for the Hotel Barton, and had settled the same; that said account was paid by check, and while witness did not remember fully about the check he had no doubt that the same was a check of Mr. Key.

Thereupon, at the demand of the attorney for the plaintiff and pursuant to notice duly served upon him in accordance with rules of court, the attorney for the defendant Scott produced and handed to attorney for plaintiff the following letter, which was thereupon read in evidence without objection:

"Room 719, Postal Telegraph building.

NEW YORK, *Nov.* 7, 1900.

Mr. James P. Scott, Waldorf-Astoria, New York.

DEAR SIR: I write this to confirm our conversation of a few days ago, until such papers can be executed that will be satisfactory to both parties.

It is understood by me that I hereby bind myself to the effect that in consideration of your going on my bond for the lease of the Wellington Hotel property and investing in repairing and opening said hotel a sum of money not to exceed $5,000, which $5,000 under the terms of my lease are to be deducted from the rent at the rate of $1,000 per year, I hereby agree that the finances of the said hotel shall be handled by a treasurer or cashier to be appointed or approved by you; that all payments shall be made only on joint check of said cashier and myself, and that you shall receive in consideration of the foregoing from me a sum equal to one-half of my profits.

Very truly yours, JAS. BARTON KEY."

CHARLES F. DALY, a witness on behalf of the plaintiff, testified as follows:

That during the months of November and December, 1900, and January and February, 1901, he was barkeeper at the Barton hotel;

that he went to work there about November 22nd and
16 stayed until the receiver took hold of the property, about February 5th, 1901; that Mr. Scott first came to the hotel the latter part of November or first of December; perhaps stayed there two or three days, and was backwards and forwards, off and on, until the receivers took charge; that "Mr. Scott came in and I was introduced to him by Mr. Key as a partner;" that Mr. Scott spoke to Mr. Key in regard to different things about the hotel; gave his opinion regarding the paper, and things of that sort. Mr. Scott spoke to witness about the pictures in the bar not hanging as they should. Mr. Key gave witness instructions to give Mr. Scott whatever he desired from the bar. Mr. Key would give Mr. Scott an introduction to a gentleman as his partner. I have heard him lots of times. Mr. Scott told witness that he was to bring Mrs. Page over to act as cashier to handle the money and sign all the checks. Mrs. Page acted as cashier at the hotel, and took the receipts from the bar every night after Mr. Key had left the hotel. She carried the money upstairs to Mr. Scott.

On cross-examination the witness testified that he had accompanied Mrs. Page to Mr. Scott's room on one occasion when she had the bar money in the tin box.

On redirect examination the witness stated that after Mr. Key had left the hotel and gone to Baltimore Mr. Scott told him to continue at the hotel and he would see that everything went all right; that Mrs. Page would accept the money at night. He thought Mrs. Page came to the hotel about January, 1901.

(Mr. PRENTISS:)

Q. Did you ever have any conversation with Mr. Scott respecting his interest in the hotel, if any?

A. Only to look after it and do what I could for them in regard to business matters.

Q. Did he ever say to you what interest he had in the hotel, or what relation he bore to it?

A. No. He didn't make any statement of that sort.

Q. Did he ever tell you who the proprietor of the hotel was?

A. No, sir; he didn't.

Mr. Key left the hotel for Baltimore on the 2nd of February, 1901, which was a Saturday, and the receivers took charge of the hotel on the following Tuesday. Mr. Key came down to the bar and said
17 he was going. He shook hands with me and said good bye, and that's all I saw of him.

On recross-examination the witness testified that he was employed in the hotel as a barkeeper by Mr. J. Barton Key on the 22nd day of November, 1900; that Mr. Key gave him all instructions with regard to the management of the bar and paid him a salary; that he had no conversation whatever with Mr. Scott until some time in December; on this occasion Mr. Scott was sitting in the bar and complimented him upon the nice appearance of the lunch counter, and made certain suggestions with respect to making

the bar look attractive. Other persons who dropped into the bar also complimented him and made suggestions to him, but he did not regard their compliments and suggestions as much as he did those coming from Mr. Scott, as he attached more weight to what Mr. Scott would say than to what Smith or Jones might say. Witness never received any money from Mr. Scott, and, apart from ordering him to straighten up some pictures hanging in the bar, never took any orders from him. Witness was introduced to Mrs. Page by the head bellman. Mr. Scott did not bring Mrs. Page in in order to introduce her to witness, though he remarked on one occasion when Mrs. Page was present, "This is my bar and this is my bar-keeper." Witness understood that Mrs. Page was Mr. Scott's cousin. Mr. Scott remarked to him, "I am going to bring a cousin of mine over here; she is poor and she wants the position, and she is a nice woman, and I am going to put her in charge of my money and to sign all checks." Witness did not know what money Mr. Scott had or what checks he would have to sign about the hotel. Witness only knew that Mrs. Page was the person Mr. Scott referred to as his cousin, because James Robinson, Mr. Scott's colored valet, said so.

Thereupon attorney for the plaintiff introduced in evidence the bill of complaint filed in the supreme court of the District of Columbia, in equity cause No. 22044, wherein James P. Scott was complainant and James Barton Key was defendant, on the ground
18 that said bill of complaint contained an admission by Mr. Scott as to his relations with Mr. Key, said bill of complaint reading as follows:

"To the honorable the associate justice of the supreme court of the District of Columbia, holding an equity term:

Your complainant, James P. Scott, who sues in this action in his own right and in behalf of any and all other creditors of the above-named defendant, James Barton Key, who may seek relief by and contribute to the costs and expenses of these proceedings, respectfully shows:

1. Your complainant is a citizen of the United States and of the State of Pennsylvania, recently residing in Paris and at present temporarily sojourning in the city of Washington, in the District of Columbia.

The defendant, James Barton Key, is a citizen of the United States, having his domicile in the city of Baltimore, in the State of Maryland.

2. That some time in November, A. D. 1900, the defendant represented to your complainant that he was about to embark in the enterprise of keeping a hotel in the city of Washington, District of Columbia, and applied to this complainant for assistance in such regard, representing to your complainant that with such assistance as your complainant was able to and would extend to him the defendant would be able to secure a lease of the premises situated at 723 15th street northwest, in the city of Washington, formerly known as Welcker's hotel and later as the Hotel Wellington.

3. Your complainant, being impressed with the repre-
19 sentations made to him by said defendant, agreed, as requested, to become surety for the prompt payment of the rent of said premises under the contemplated lease, and also to advance from time to time, as occasion might require, sums of money, not to exceed $5,000 in the aggregate, for the purpose of necessary repairs and improvements to be made in and about said premises, it being understood by and between your complainant and said defendant that the said sums of money so advanced should be repaid out of a rebate which was to be allowed by the lessor to the lessee, and that in consideration of your complainant becoming surety for the prompt payment of the rent as aforesaid and the advancements of said sums of cash, this complainant should be entitled, by his agent acting as treasurer or cashier, to handle all the receipts of said business, and to receive for his own use and benefit from the defendant one-half of the profits to be derived from the conduct of said business, it being further understood that, except as above set forth, your complainant was not to be identified with or concerned in the conduct of said enterprise.

4. On or about the 5th day of November, 1900, said defendant did enter into a lease of the premises in question with one Cecilia d'Andigna, acting through and by Henry May, her attorney-in-fact, which said lease granted to the defendant the use and occupation of the premises in question for a period of five years, to begin on the 1st day of December, 1900, the rent reserved being the sum of $7,500 per annum, payable monthly in advance at the rate of $625 per month, with a rebate to the lessee on account of improvements made and to
20 be made in and about said premises of the sum of $5,000, to be deducted from the said rent reserved at the rate of $1,000 per annum; that, in accordance with the agreement above set forth, this complainant did become surety upon said lease for the prompt payment of the rent reserved and did further advance the said sum of $5,000 in cash to pay for the necessary improvements and repairs to said premises; that, notwithstanding your complainant had thus fully complied with his obligations under said agreement, he has, at the instance and request and as the result of the importunities of the defendant, advanced to said defendant, to be by him applied in the stocking and equipping of the premises in question and the preparation of the same for the reception of guests and for and on account of the conducting of the same as a hotel, further sums of money, aggregating, in addition to the sum of $5,000 above set forth, the further sum of about $3,000, making a total of cash advanced of about $8,000, and has also from time to time, at the instance and request of said defendant, endorsed said defendant's promissory notes in various sums, the total amount of said notes which have been discounted or otherwise disposed of by said defendant aggregating, as this complainant believes, approximately $2,000.

5. For the purpose of carrying on the business of a hotel in the premises aforesaid, extensive improvements and repairs both of the hotel property itself and of the contents thereof were made by the

said defendant, who used for such purposes in a large measure the cash furnished by your complainant above referred to. Your complainant is informed and believes, and therefore avers,
21 that, notwithstanding the large payment of cash on such accounts, that there *is* still due and owing from said defendant to builders and materialmen, to upholsterers and decorators, and to dealers in supplies of various sorts and kinds considerable sums of money, aggregating, as your complainant believes, the further sum of $10,000, and that many of said creditors insist upon immediate payment of the amount due to them.

6. Your complainant avers that some time during the month of December, 1900, the said premises, being in fit condition, were opened by said defendant as a hotel, under the name of "Barton's," and that since such opening it has, until the present time, been conducted by said defendant as a hotel, but notwithstanding the distinct agreement between defendant and your complainant that the latter, by his agent acting as treasurer or trustee, should handle the receipts of said business, the said defendant has not permitted the same to be done, nor has he at any time rendered to your complainant any account of the sums received in the course of such business, nor of the disposition made thereof, but, on the contrary, although often requested so to do, has refrained from making such accounting, and has kept this complainant in the dark as to the financial condition of said business.

8. Your complainant avers that said defendant has failed and neglected to pay out of said receipts the rent for said premises for the months of January and February, 1901, as will more fully appear from a letter this day received from J. V. N. Huyck, a real-estate broker having charge of the collection of said rents for the lessor, which said letter and its enclosure is hereto annexed,
22 made a part hereof, and marked "Exhibits A and B" respectively.

Complainant further avers that defendant has neglected for several weeks past to pay to the employés of said hotel their respective wages and has likewise neglected to pay to the market men and to supply men of various sorts the amounts which have become due and owing to them.

8. The complainant avers that the defendant is lacking in natural ability and unfit by training for the management of said business; that he is without means to defray the many obligations which he has incurred, is in a bad state of health, and has left this jurisdiction; that the hotel is without proper supplies requisite and necessary to enable the business to be further conducted; that the servants and employés are clamoring for their wages and the dealers in market and other supplies demand immediate payment; that the entrances and corridors of the building are obstructed by creditors clamoring for payment, and they are threatening immediate legal proceedings.

9. The complainant is informed and believes, and therefore causes the court to be informed, that the business of a hotel, if prop-

erly conducted in and upon the premises aforesaid, would by reason of the favorable location of said premises be lucrative and productive of much profit; that if attachments and other processes at law can be levied upon the said premises and contents thereof at the instance of warring creditors in a race of diligence the said property and all the value that may be therein will be dissipated and wasted to the great detriment not only of your complainant but of all other creditors who may have claims against the same.

23 Wherefore, for the purpose of preserving the said property and business, and for the purpose of having the said business temporarily, at least, conducted in a proper and businesslike manner, and for the preservation of the assets of said defendant for the benefit of all creditors who may seek to avail themselves of the relief afforded by this bill, your complainant prays that a receiver may be appointed, who shall forthwith take possession of said premises and of the leasehold interest of the defendant therein and of all of the contents of said premises, by whatever name and description the same may be designated, and to hold the same until the further order of this court, and to continue the said business upon such terms and upon such directions as this honorable court may from time to time devise and give, and ultimately to wind up the said business and to make such sale or other disposition of the said leasehold interest in said premises and of the business conducted therein and of the assets and properties belonging to said defendant and found upon said premises as this honorable court shall direct.

To the end, therefore, that said defendant may be restrained and enjoined from disposing of the said leasehold interest in said premises, or of any interest therein, and may be further restrained and enjoined from disposing of any of the assets of said business or contents of the premises aforesaid, and that said defendant may render an accounting to your complainant, and for such — and other relief as to this honorable court may seem proper, your complainant prays

24 that a gracious writ of subpœna may be issued out of this honorable court, addressed to this defendant, James Barton Key, requiring and commanding him to appear herein at a day to be fixed by this court to show cause why he should not be perpetually enjoined and restrained and why a receiver should not be appointed as prayed.

And complainant will ever pray, &c., &c., &c.

JAMES P. SCOTT,
Solicitor for Complainant.

F. D. McKENNEY,
J. S. FLANNERY,
Solicitors for Complainant.

DISTRICT OF COLUMBIA, *ss:*

I, James P. Scott, being first duly sworn, do depose and say that I have read over the foregoing and annexed bill of complaint and know the contents thereof, and that the statements therein contained

made of my own knowledge are true, and those made upon information and belief I believe to be true.

JAMES P. SCOTT.

Subscribed and sworn to before me this 4th day of February, A. D. 1901.

AYLETT T. HOLTZMAN,
[SEAL.] *Notary Public, D. C.*"

F. W. DAW, a witness on behalf of the plaintiff, testified that he has been for three or four years last past a paper-hanger and decorator; that up to the 28th day of February, 1901, he was a member of the firm of Daw & Dickson. At present he is engaged in business on his own behalf; that he did work in the Hotel Barton in the latter part of November, 1900; that his contract for such work was made with Mr. Key; that he never saw Mr. Scott except
25 on one occasion when he was showing Mr. Key some samples of wall-paper, and a gentleman came into the room; Mr. Key introduced this gentleman to him in the following words: "Mr. Daw, this is Mr. Scott, my backer; Mr. Scott, this is Mr. Daw, our paper-hanger." Witness went on showing the samples of paper, and the gentleman who had been introduced as Mr. Scott presently said, "Jim, I don't like that paper. I would sooner have that paper," mentioning some other paper witness was showing him at the time; witness does not recollect whether Mr. Scott took any further part in the selection of the papers or not.

JAMES BARTON KEY, being called as a witness on behalf of the plaintiff, testified that he is one of the defendants in this case; that the letter heretofore introduced in evidence from himself to Mr. Scott was taken by him to Mr. Scott's room by witness and left on Mr. Scott's bureau; witness told Mr. Scott that it was a letter regarding the proposition he had made to Scott for the loan of money; Mr. Scott never had any further conversation with witness about the letter, but he went on his bond to secure the rent of the hotel and advanced the money; at the time of opening the hotel witness was without means, and the hotel was opened entirely on the money loaned to witness by Scott; that about February of the following year Mr. Scott and witness had a falling out. Scott demanded of witness to know what he (witness) was going to do in order to secure Scott the money that he had loaned to witness; at the same time Scott said he wanted to know whether, provided he got some
26 experienced hotel man who could do better with it, witness was willing to let him take witness' place, and said he had one who was willing to come in; he also said that he thought it would be a good idea to have some man more experienced in the hotel business than was witness in charge of the hotel as manager; witness declined to assent to such suggestion.

(Mr. PRENTISS:)

Q. As a matter of fact, did he not demand that you should sign over the lease and get out?

A. He did not.

Q. Just state what his demand was.

A. As nearly as I can recollect, he thought it would be a good idea to have some man more experienced in the hotel business in there. He was still willing that I should be there and retain some interest, which we could agree upon in some way or other. If this other man was willing to come in and take my place, he was willing to accept it, provided I would give him the direction of matters; and I declined to agree to it.

* * * * * * *

(Mr. PRENTISS:)

Q. Do you recollect talking with Mr. Clarke, about that time, after you had some words with Mr. Scott?

A. I saw Mr. Clarke a great many times.

Q. You and your counsel were both given notice to produce a letter from Mr. Scott, referred to in a conversation that you had with him. Have you that letter?

A. No, sir, I have no such letter.

Q. You say you have not such a letter now?

A. No; there was no such letter in existence. It was a letter—I spoke to Mr. Clarke about a little scrap of paper written about some friends of his who got some rooms that were freshly painted. He heard of it and wrote me a little note about it—somebody that he had recommended to come down there—some Philadelphia people.

Q. That was the note you referred to in your conversation with Mr. Clarke?

A. Yes.

Q. Have you that little slip?

A. No, I have not; I didn't keep it.

Q. That, I believe, was signed "Your partner, James P. Scott"?

A. No, it was not signed that way. There was some allusion to partner, but it was not signed "Your partner, James P. Scott." I forget just how it was signed, but it was something about "partner." It used the word partner, but it was not signed that way. It was written in a paragraph right through. It was not signed as partner. He said that we had been talking about having a very precise and nice hotel, and all that, and he wrote to say that he thought this was not quite the idea of running a hotel on the style of the Bellevue, to have people who came there put into rooms that were freshly painted. I forget just how it was worded.

The witness having produced the guests' register of the Hotel Barton, pursuant to notice served upon him by the attorney for the plaintiff, stated that Mr. Scott's name did not appear anywhere upon said register, nor upon the transient guests' ledger.

27

Thereupon, upon cross-examination, the witness testified that Mr. Scott came to the Hotel Barton at his request and as his guest a few days before the hotel was opened for the reception of guests. At the time of the opening of the hotel Mr. Scott was sick and confined

to his room, and witness reserved the first line on the guests' register for the registration of Mr. Scott's name, saying to the first man who registered to "leave a place for my first guest, Mr. Scott, at the top of the page." Witness invited Mr. Scott to stop at the Hotel Barton during the opening, so far as his rooms were concerned, as witness' guest. Mr. Scott paid cash for everything he got in the restaurant and at the bar until witness told him not to pay cash, but to sign regular charge checks, which could be kept together and the amount thereof could be charged againt the money which witness owed to him. This was done for a long time. These checks so signed by Mr. Scott were kept by witness until he left the hotel, just before the receivers took charge. Witness does not know what has become of them since. The letter introduced in evidence expresses the relationship between Mr. Scott and himself with respect to the business of the hotel, and their relations in that regard were not otherwise than as expressed in said letter. With respect to the clause in the letter to the effect that "the finances of the hotel shall be handled by a treasurer and cashier to be appointed and approved by you," witness testified that a lady, Mrs. Page, was brought on from New York, but she never went
28 actually to work, because the books were being prepared for her by an expert book-keeper; that she never took hold of any of the business of the hotel. Until witness went away she had never handled any money of the hotel. Witness left the hotel the first Saturday in February, and went to Baltimore to spend Sunday. He was taken sick while there, and on the next day was compelled to go to a hospital for medical aid, and did not return to Washington until the following Monday week. With respect to the clause of the letter to the effect that "all payments shall be made only on the joint checks of said cashier and myself" (meaning witness), witness states that no payments were made on such joint checks; that he, witness, signed all checks individually; that there were no profits received by him at any time from the business.

Attorney for plaintiff thereupon read in evidence a letter from James P. Scott to W. B. Moses and Sons in the following words and figures:

"J. Barton Key, prop.—Barton's, formerly Welcker's, on the European plan.

Tel. 2557.

WASHINGTON, D. C., *December 22nd*, 1900.

W. B. Moses, 11th & F Sts. N. W., city.

GENTLEMEN: Mr. James Barton Key, with whom I am financially interested in the rebuilding and refitting of Barton's new hotel, formerly the Wellington, informs me that he is about to pur-
29 chase from you a bill of goods consisting of carpets, rugs and various other house-furnishing materials, which bill will amount to something between eight hundred and fifteen hundred dollars, and Mr. Key tells me that he has arranged with you to pay

you one-quarter of the amount of the bill in cash, on which account he has already paid you $250.00, and for the balance he is to give you three equal payments in notes endorsed by me at 30 days, 60 days and 90 days, dating January 15th.

I write this to say to you that when the goods are delivered and the notes are prepared by your firm and Mr. Key, I will, as requested by Mr. Key, endorse the same.

Very truly yours, JAMES P. SCOTT."

Thereupon JAMES BARTON KEY, being recalled for further cross-examination, produced a ledger belonging to the Hotel Barton, and stated that the same was the first ledger used in that hotel; that said ledger contained an account with James P. Scott, in which he was charged with cash items beginning on the 12th day of December, 1900, and from time to time until January 28th; that the charges made against Mr. Scott, and appearing upon said ledger, amounted to $281.91.

Thereupon, the attorney for the plaintiff having announced the testimony on behalf of the plaintiff closed, the attorney for the defendant Scott moved the court to direct the jury to return a verdict in favor of the defandant Scott; which motion was granted by the court and an announcement made by the court in the following words: "I shall direct the jury, when I come to charge them in this case, to return a verdict for Scott."

30 Thereupon the attorney for the defendant Key moved the court to direct the jury to return a verdict in favor of the defendant Key also, on the ground that the suit of the plaintiff was against the defendants Key and Scott as coparters, and it appearing from the proof as declared by the court that no copartnership existed between the defendants, therefore no judgment could be rendered against the defendant Key in the pending proceedings; which motion the court overruled, and to which action of the court the attorney for the defendant Key then and there duly excepted, and such exception was noted upon the minutes of the trial justice.

Thereupon the court instructed the jury as follows:

"GENTLEMEN OF THE JURY: In view of the conclusion reached by the court as to the legal effect of the testimony which has been submitted to you, the court instructs you in this case to return a verdict for the defendant Scott and against the defendant Key. The undisputed facts make it proper that that character of verdict should be rendered. Your verdict should be in favor of the plaintiff Roberts against the defendant Key for $196.30."

Mr. BLAIR: "I reserve an exception to the instructions of the court. It seems to me that in this particular case we are entitled to a special finding by the jury that there is no partnership in this case."

The COURT: "It seems to me that you find your ground of

31 exception in my instruction to the jury. I have in effect told the jury that the court finds as matter of law that from

the undisputed facts in the case there is no partnership; and therefore I have instructed the jury to return a verdict in favor of the defendant Scott on that ground. I do not see why there should be a special verdict."

Mr. BLAIR: "We think that is sufficient, and if put in that form we have no objection to it."

Mr. McKENNEY: "I think the instruction should be that, it appearing from the undisputed evidence in this case that there was no partnership relation between the defendants to this action, the verdict of the jury upon the pleadings and proof should be for the defendants."

The court having further instructed the jury to return a verdict for the defendant James P. Scott, and also to return its verdict in favor of the plaintiff against the defendant James Barton Key in the sum of $196.30, the attorney for the defendant James Barton Key noted an exception to the ruling of the court, in so far as it directed the jury to return a verdict in favor of the plaintiff and against said defendant Key for the sum mentioned, both of which exceptions were duly entered upon the minutes of the trial justice before the jury returned its verdict in accordance with the court's instruction.

Be it further remembered that the foregoing was all of the evidence tendered in the above cause in the course of the trial,
32 and that the separate and several exceptions taken by counsel, as hereinbefore set forth, were taken before the rendition of the verdict herein.

Wherefore the attorney for the defendant James Barton Key then and there prayed the court and now prays the court to sign and seal this his bill of exceptions, and the attorney for the plaintiff Roberts objects to the signing and sealing of the same upon the ground that there is no right of appeal allowed by law from the judgment of this court in this cause; which objection being overruled by the court and an exception to such action being first duly noted, this bill of exceptions is accordingly signed and sealed this 28th day of April, A. D. 1902.

T. H. ANDERSON, [SEAL.]
Associate Justice.

Settled by counsel this 28th day of April, 1902—
HENRY P. BLAIR,
Attorney for Defendant Key,
F. D. McKENNEY,
Attorney for Defendant Scott,
W. C. PRENTISS,
Attorney for Plaintiff,

without prejudice to objection noted above.

33 *Motion to Extend Time for Filing Record.*

Filed April 29, 1902.

In the Supreme Court of the District of Columbia, the 29th Day of April, A. D. 1902.

WILLIAM F. ROBERTS, Plaintiff,
vs.
J. S. BARTON KEY and JAMES P. SCOTT, Co-partners, Defendants. } At Law. No. 44625.

Now comes the defendant J. S. Barton Key, above named, and moves this honorable court to extend the time for filing the record on appeal in the Court of Appeals of the District of Columbia for thirty (30) days from this date, and as ground for such motion respectfully shows that it has been impossible to prepare the record in this cause up to this time, pending the settlement of the bill of exceptions herein.

H. P. BLAIR,
Attorney for Defendant J. S. Barton Key.

Order Extending Time to File Record.

Filed April 29, 1902.

In the Supreme Court of the District of Columbia, the 29th Day of April, A. D. 1902.

WILLIAM F. ROBERTS, Plaintiff,
vs.
J. S. BARTON KEY and JAMES P. SCOTT, Co-partners, Defendants. } At Law. No. 44625.

34 Upon consideration of the motion of the defendant J. S. Barton Key, heretofore filed herein, it is, this 29th day of April, A. D. 1902, ordered that the time for filing the transcript of record on appeal in the above-entitled cause be, and the same is hereby, extended for thirty (30) days from this date.

T. H. ANDERSON,
Associate Justice, D. C.

Directions to Clerk for Preparation of Record.

Filed May 5, 1902.

In the Supreme Court of the District of Columbia, the 5th Day of May, 1902.

ROBERTS vs. KEY. } At Law. No. 44625.

The clerk of said court will copy in the transcript of record for the Court of Appeals the following:

Original writs issued by the justice of the peace;

Itemized bill of W. F. Roberts, showing pencil-marks therein;

Certificate of proceedings before justice of the peace, and make a memorandum showing the appeal to the S. C. D. C., trial, verdict, judgment in S. C. D. C., and appeal to Ct. of Appeals & bond.

HENRY P. BLAIR,
Att'y for J. S. Barton Key, Appellant.

35 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia,* } ss:

I, John R. Young, clerk of the supreme court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 34, inclusive, to be a true and correct transcript of the record, as per directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 44625, at law, wherein William F. Roberts is plaintiff and James S. Barton Key *et al.* are defendants, as the same remains upon the files and of record in said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, in said District, this 12th day of May, A. D. 1902.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover: District of Columbia supreme court. No. 1220. James S. Barton Key, appellant, *vs.* William F. Roberts. Court of Appeals, District of Columbia. Filed May 14, 1902. Robert Willett, clerk.

36 In the Court of Appeals.

JAMES S. BARTON KEY, Appellant,
vs.
WILLIAM F. ROBERTS. } No. 1220, April Term, 1902.

Now comes the appellee by his attorney and showing to the court that the appellant's appeal herein is from a joint judgment against him and the United States Fidelity and Guaranty Company rendered by the supreme court of the District of Columbia in a cause pending therein on appeal from a judgment of a justice of the peace, moves the court to dismiss the said appeal to this court, for the reasons:

First. That the appeal is defective in not joining the said United States Fidelity and Guaranty Company as appellant and no proceeding by way of summons and severance having been had.

Second. That this court has no jurisdiction on appeal from a judgment of the court below in such cases.

W. C. PRENTISS,
Attorney for Appellee.

(Endorsed:) No. 1220. Court of Appeals, D. C., April term, 1902. James S. Barton Key, appellant, *vs.* Wm. F. Roberts. Motion of appellee to dismiss appeal. Court of Appeals, District of Columbia. Filed Jun- 3, 1902. Robert Willett, clerk.

37 THURSDAY, *June 5th, A. D.* 1902.

JAMES S. BARTON KEY, Appellant,
vs.
WILLIAM F. ROBERTS. } No. 1220.

The motion to dismiss the appeal in the above-entitled cause was submitted to the consideration of the court by Mr. W. C. Prentiss in support of motion, and leave is hereby granted him to file brief in cause No. 1199 on motion to dismiss.

38 JAMES S. BARTON KEY, Appellant,
vs.
WILLIAM F. ROBERTS. } No. 1220.

(Mr. Chief Justice ALVEY delivered the opinion of the court:)

The motion to dismiss the appeal in this case must prevail. The action was originally brought before a justice of the peace of this District to recover the sum of $196.30. The case was regularly tried by the justice of the peace, and a judgment was rendered for the plaintiff, and the defendants appealed to the supreme court of the District, where the appeal was tried *de novo* before a jury. The trial resulted in a verdict and judgment in favor of the plaintiff against one of the defendants, but in favor of Scott, the other defendant; and the defendant Key has appealed to this court.

This motion to dismiss is controlled and must abide the decision just made by this court in the case of *Groff vs. Miller*, in which it is held that section 82 of the new Code is in full force and operation, and not nullified by section 226 of the Code. The appeal must therefore be dismissed, *and it is so ordered.*

Appeal dismissed.

39 TUESDAY, *June 24th, A. D.* 1902.

JAMES S. BARTON KEY, Appellant,
vs.
WILLIAM F. ROBERTS. } No. 1220, April Term, 1902.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of the record from the supreme court of the District of Columbia, and on a motion to dismiss which was argued by counsel. On consideration whereof, it is now here ordered and adjudged by this court that this cause be, and the same is hereby, dismissed with costs, for the want of jurisdiction.

Per MR. CHIEF JUSTICE ALVEY.

June 24, 1902.

40 Court of Appeals, District of Columbia, April Term, A. D. 1902.

JAMES S. BARTON KEY, Appellant,
vs.
WILLIAM F. ROBERTS, Appellee. } No. 1220.

Appeal from the supreme court of the District of Columbia.

Motion to Set Aside Judgment and Grant a Rehearing Herein.

Now comes J. S. Barton Key, by his attorneys, and respectfully moves this honorable court to set aside the judgment heretofore rendered herein on motion to dismiss this cause and to grant a reconsideration thereof, and as ground of such motion respectfully shows that this honorable court dismissed the appeal in this cause for want of jurisdiction, on the authority of its decision in the case of Groff *vs.* Miller, No. 1199, said decision turning upon the construction placed by this honorable court upon the conflicting provis-
41 ions of sections 82 and 226 of the Code of Laws for the District of Columbia, the court holding that the reasonable interpretation of such conflicting provisions necessitated the conclusion that this court had jurisdiction to hear and determine cases originating before justices of the peace only where said causes had been moved into the supreme court of the District of Columbia from the justice of the peace by certiorari and not by appeal.

By an act "To amend an act entitled 'An act to establish a Code of Law for the District of Columbia,'" which became a law on the

1st day of July, 1902, the Congress expressly provided that the Code of Law for the District of Columbia should be amended in the following particulars:

1. By striking out the whole of section 82;

2. By striking out the quotation marks in the third and fourth lines of section 226;

The effect of such amendments being to strike out the provision heretofore occurring in the Code to the effect that:

"In no case appealed from a justice of the peace shall there be a further appeal from the judgment of the supreme court,"

and leaving the positive law upon this subject as follows:

"Any party aggrieved by any final order, judgment or decree of the supreme court of the District of Columbia or of any justice thereof, including any final order or judgment in any case heard on appeal from a justice of the peace, may appeal therefrom to the said Court of Appeals and upon such appeal the Court of Appeals shall review such order, judgment or decree, and affirm, reverse or modify the same, as shall be just, except as provided in the following sections * * *."

Such amendments by the Congress in the manner and form in which they were made must be regarded as a legislative in-
42 terpretation by the Congress itself of its purposes and intentions respecting the conflicting provisions covering appeals from justices of the peace, as the same heretofore appeared in the Code, and must reasonably be taken as an express declaration by Congress that it was its intention, as expressed in former section 226 of the Code, to permit an appeal to the Court of Appeals from the judgment of the supreme court of the District in any and all cases appealed to said supreme court from a justice of the peace, thereby including in the privilege of appeal, as seems only natural and proper, cases technically appealed from justices of the peace as well as those removed into the supreme court by certiorari.

In view of this express declaration, it is respectfully submitted that the right intended to be conferred by Congress, as declared in the amendments, should not be denied to the appellant in this case, but that he should be permitted to have the benefit of the judgment of this court upon a question of general moment and of considerable gravity to himself.

Had this case been permitted to come before this honorable court in its regular order, there is no doubt that the appellant would have been accorded the full benefit to be derived from the amendments to the Code above referred to; and as the case is still within the control of the court, it is respectfully submitted that the summary proceedings on motion to dismiss should not be permitted to deny a right so expressly conferred.

HENRY P. BLAIR,
FREDERIC D. McKENNEY,
J. S. FLANNERY,
Attorneys for Appellant.

43 JAMES S. BARTON KEY *vs.* WILLIAM F. ROBERTS. } No. 1220.

Motion for rehearing of motion to dismiss appeal.

Mr. Chief Justice ALVEY delivered the opinion of the court:

For the same reasons that the motion for rehearing was overruled in the case of *Groff vs. Miller*, the motion in this case is overruled—the ground of the motions in both cases being the same.

Motion for rehearing overruled.

44 WEDNESDAY, *October 15th, A. D.* 1902.

JAMES S. BARTON KEY, Appellant, *vs.* WILLIAM F. ROBERTS. } No. 1220, October Term, 1902.

On consideration of the appellant's motion for a rehearing in the above-entitled cause, it is by the court now here ordered that said motion be, and the same is hereby, overruled with costs.

Per MR. CHIEF JUSTICE ALVEY.

October 15, 1902.

45 Court of Appeals, D. C.

J. S. BARTON KEY, Appellant, *vs.* W. F. ROBERTS. } No. 1220, Oct. Term, 1902.

OCTOBER 23, 1902.

SIR: In making up the transcript of the record in the above case for use in the Supreme Court of the United States please include therein a transcript of all proceedings had in the Court of Appeals, together with copies of the opinion of the court delivered by Mr. Chief Justice Alvey in the case of Groff *vs.* Miller, No. 1199, on June 23, 1902, and October 15, 1902.

HENRY P. BLAIR,
F. D. McKENNEY,
Attorneys for J. S. Barton Key.

To Robert Willett, Esqr., clerk Court of Appeals, D. C.

(Endorsed:) No. 1220. James S. Barton Key, appellant *vs.* William F. Roberts. Directions to clerk for preparation of transcript. Court of Appeals, District of Columbia. Filed Oct. 23, 1902. Robert Willett, clerk.

46 DILLER B. GROFF, Appellant, } No. 1199.
v.
FRANCIS MILLER.

(Filed June 23, 1902.)

(Mr. Chief Justice ALVEY delivered the opinion of the court:)

In this case there is a motion entered to dismiss the appeal, upon the ground that there is no jurisdiction in this court to hear and decide the case.

The case was instituted before a justice of the peace by whom it was tried and determined, and a judgment was rendered for the plaintiff. From that judgment an appeal was taken by the defendant to the supreme court of this District, where, after trial *de novo* before a jury, a judgment was rendered in favor of the plaintiff for $96.55, and from which judgment the defendant has taken an appeal to this court. The plaintiff in the judgment contends that the appeal to and determination by the supreme court of the District is final, and that there can be no further appeal to this court. If that contention be well founded, of course, this appeal must be dismissed.

The determination of this motion to dismiss involves a question of the proper construction of several of the sections of the new Code enacted by Congress for this District; the sections involved being those relating to civil actions instituted before justices of the peace, and appeals therefrom. The act of Congress of March 3, 1901, ch. 854 (31 St. p. 1189) is entitled "An act to establish a code of law for the District of Columbia," and whereby it is declared "That the following is hereby enacted and declared to be a code of law for the District of Columbia, to go into effect and operation from and after the first day of January, in the year 1902." The code thus enacted is divided into chapters, with many subdivisions and titles,
47 to embrace the contents of the entire enactment.

In chapter 1 of this Code, under title, *justices of the peace*, there are several sections that have more or less bearing upon the question presented. They are as follows:

"SECTION 7. Jury trials.—Trial by jury before justices of the peace is hereby abolished."

Section 8 provides, "That in all cases of *concurrent jurisdiction* the *defendant* may remove the case for trial into the supreme court of the District by a writ of *certiorari* (to be awarded by said court, or one of the justices thereof, upon a petition under oath, the form and substance whereof shall be prescribed by said court)."

"SECTION 9. Jurisdiction.—The said justices of the peace shall have jurisdiction in all civil cases in which the amount claimed to be due for debt or damages arising out of contracts, expressed or implied, or damages for wrongs or injuries to persons or property, does not exceed three hundred dollars, * * * and said jurisdiction shall be exclusive when the amount claimed for debt or damages, or the value of personal property claimed does not exceed fifty dollars, and *concurrent* with the said supreme court when it exceeds fifty dollars.'

"SECTION 30. Appeal.—Where the debt or demand, or the value o

personal property claimed, exceeds five dollars, and in actions for the recovery of possession of real estate, as aforesaid, either party who may think himself aggrieved by the judgment or other final order of a justice of the peace, may appeal to the supreme court of the District."

Under title, Supreme Court of the District of Columbia, it is provided by—

"SECTION 80. That on such appeal, the circuit court shall, in a summary way, hear the case *de novo* upon the proofs and allegations of the parties and determine the same according to the law and the equity and the right of the matter; but either party may demand a trial by jury."

48 "SECTION 82. In *no case appealed* from a justice of the peace shall there be *any further appeal* from the judgment of the circuit court." This is clear and positive.

But under title, Court of Appeals, occurs this provision:

"SECTION 226. Jurisdiction.—Any party aggrieved by any final order, judgment, or decree of the supreme court of the District of Columbia, or of any justice thereof, 'including any final order or judgment in any case heard on appeal from a justice of the peace,' may appeal therefrom to the said Court of Appeals;" and upon such appeal, &c.

These are all the provisions that would appear to have any relation to the question under consideration; and from them it would appear that there is difficulty in reconciling and making consistent section 82 with the provision contained in section 226, if we adhere strictly to the literal terms employed in the latter section. Indeed, it is clear, both provisions, according to the strict letter of the statute, will not stand together; one must yield and become a nullity in order to give the other effect, if we adopt the literal meaning of the terms employed in section 226. Congress certainly did not intend to produce any such result in the enactment of these provisions, but, on the contrary, intended each provision to have effect. We think, however, the apparent conflict and difficulty, growing out of the language employed in section 226, may be removed, and the sections reconciled and made consistent, by the application of a few well-established rules of construction of statutes.

In the first place, these provisions of the Code must be construed in the light of the pre-existing law, the reason of the matter, and also in view of the consequences that would be produced by adopting the contention of the appellant; that is to say, that the provision of section 226, being the later provision of the Code, should prevail, to the exclusion of the positive provision contained in section 82. This theory of the last expression of the legislature is the only argument that has been or can be invoked in support of the contention of the appellant. By that argument, the provision

49 so clearly and positively expressed by section 82 is utterly nullified, as if it were no part of the Code. Was this the intention of Congress, and should such be the construction? Why thus nullify and strike out section 82, in order to give force and literal effect to the provision contained in section 226? While

there may be some cases found that give countenance to such contention, yet the decided weight of decision is, that such construction should never be adopted except upon the most urgent and irresistible reason. It would seem to be well settled that a code, or body of revised laws, should be regarded as a system of contemporaneous acts, as established *uno flatu;* or as a simultaneous expression of the lawmaker. Its various sections relating to the same subject should, if practicable, be construed together, as one; as one act or chapter, or as continuous sections of the same act; and one chapter is to be read with another, relating to the same subject, as one body of law, though collected from independent laws of previous enactment, originally passed at different times and re-enacted by a revisory act. If possible, the various portions of such code or revision must be so construed as to harmonize with one another. Its general system of legislation upon the subject-matter should be taken into view, and any particular article construed in conformity therewith, unless an intention to depart from it be clearly shown; and definitions contained in it are to be construed with reference to its positive enactments *in pari materia*. Endlich, on Inter. of Sts. sec. 40, and cases there cited.

It is an established rule in the exposition of statutes, says Chancellor Kent, "that the intention of the lawgiver is to be deduced from a view of the whole, and of every part of a statute, taken and compared together. The real intention, when accurately ascertained, will always prevail over the literal sense of the terms. When the expression in a statute is special or particular, but the reason is general, the expression should be deemed general. *Scire leges, non hoc est verba earum tenere sed vim ac potestatem*, and the reason and intention of the lawgiver will control the strict letter of the law, when the latter would lead to palpable injustice, contradiction, and absurdity." 1 Kent Com. 461–'2. And as illustrative of this principle of construction, it is stated by the same learned author, that a saving clause in a statute will be rejected, when it is directly repugnant to the purview or body of the act, and could not stand without rendering the act inconsistent and destructive of itself. *Ib.*

And so it is an established rule, that where words are obscure or doubtful, the intention of the legislature is to be resorted to in order to find the meaning of the words as employed in the statute. A thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute, is not within the statute unless it be within the intention of the makers of it. *People vs. Utica Ins. Co.*, 15 John., 358, 380. And so therefore, that which is within the letter of the statute, may sometimes not be within the statute, not being within the intention of the makers. "If laws and statutes seem contrary to one another, yet if by interpretation they may stand together, they shall stand;" and where two laws only so far disagree or differ, as that by any other construction they may both stand together, the rule that *Leges posteriores, priores contrarias abrogant*, does not apply, and the latter is no repeal of the former.

Roll. Rep. 90, 91; *2d Co. Rep.* 5, 6; *19th Vin. Abs.* 519, 525; *4 Gill & John.*, 152, *Canal Co. vs. Railroad Co.*

The rule is very clearly stated by Mr. Chief Justice Fuller, speaking for the Supreme Court, in the case of *Petri vs. Commercial Bank*, 142 U. S., 644, 650. In that case, he said: "The rule that every clause in a statute should have effect, and one portion should not be placed in antagonism to another, is well settled; and it is also held that it is the duty of the court to ascertain the meaning of the legislature from the words used and the subject-matter to which
51 the statute relates, and to restrain its operation within narrower limits than its words import, if the court is satisfied that the literal meaning of its language would extend to cases which the legislature never intended to include in it." See also case of *Bennier vs. Bennier*, 147 U. S. 246.

It is difficult to suppose that it was ever the intention of Congress, by the adoption of section 226 of the Code, to give the right of appeal to this court in all cases of appeal from justices of the peace to the supreme court of this District; even though the amount in controversy barely exceeded five dollars. Yet the words employed in the section, if taken literally, would seem to confer the right. Where the demand in controversy exceeds fifty and does not exceed three hundred dollars, the suit therefor- may be brought either before a justice of the peace or in the supreme court of the District, and if brought before a justice of the peace, the *defendant* may remove the case to the supreme court of the District by *certiorari* for trial in the first instance, or he may have a trial before the justice of the peace, from whose judgment either party may appeal to the supreme court of the District. If the case be removed into the supreme court by *certiorari*, and be there tried, and judgment rendered, then either party may appeal to this court. If the words in section 226, instead of being read as applying to appeals strictly as such from justices of the peace, be read as applying to final orders or judgments in any case heard on return of *certiorari* by or from a justice of the peace, the apparently conflicting provisions of sections 82 and 226 would be made to harmonize and be rendered consistent, the one with the other, and would consist throughout with the general scheme of the statute relating to civil actions brought before justices of the peace. And this, we think, is the fair and rational construction to be placed upon the terms employed in section 226; as thereby all the provisions of the Code relating to this subject are given full effect and operation, and none rendered null and
of non-effect, by reason of the apparent conflict between
52 sections 82 and 226, such as would be the case if the contention of the present appellant were sustained. We know that, in popular understanding, the proceeding by *certiorari* is regarded as in its nature an appellate proceeding, and in many jurisdictions it is made so in reality. Considering the entire subject, and all the provisions of the Code relating thereto, we think it a reasonable inference that the proceeding referred to in section 226, as originating with and coming from a justice of the peace into the Supreme Court for trial and judgment, is the proceeding authorized to be brought

therein by *certiorari*, and not technically an appeal. By this construction, effect is given to the provision incorporated in section 226, and section 82 is allowed to stand and have operation, whereby it is declared, in accordance with the pre-existing law, that "in no case appealed from a justice of the peace shall there be any further appeal from the judgment of the circuit court."

This being our conclusion, it follows that this appeal is improperly here, and it must therefore be dismissed; *and it is so ordered.*

Appeal dismissed.

53 DILLER B. GROFF *vs.* FRANCIS MILLER. } No. 1199.

(Filed October 15, 1902.)

Motion for rehearing on motion to dismiss appeal.

Mr. Chief Justice ALVEY delivered the opinion of the court:

There is a motion made in this case for rehearing on motion to dismiss appeal, and which is founded upon the recent act of Congress of June 30, 1902, providing various amendments to the District Code. By this amendatory act sections 81 and 82 of the Code are repealed, without substituting any other provisions in their stead; and it is supposed that this is a congressional construction of section 226 of the Code, to the effect that the right of appeal was intended to be secured to this court from the supreme court of the District from any final order or judgment in any case heard on appeal from a justice of the peace. In disposing of the motion to dismiss the appeal in this case, we so construed the apparently conflicting sections 82 and 226 of the Code as to give effect to both sections, as we were required to do by established canons of construction. The Code was adopted as an entirety, and as a single legislative act, and no one part or section of it could in reason be said to be the last expression of legislative will. If in the amendatory and repealing act, passed after the appeal was disposed of by this court, congressional construction is to be accepted as to the meaning originally intended by section 226, then the fact that it was deemed necessary to repeal section 82, in order to give force and effect to section 226, it would follow that while both sections remained unrepealed they neutralised and frustrated each other, and neither could be allowed effective operation. This would leave the law as it existed prior to the adoption of the Code in full force, that is to say without any effect-
54 ive statutory right of appeal to this court, in cases like the present; and that being the case, the appeal taken in this case could not be sustained. In any aspect, therefore, this appeal would have to be dismissed.

Motion for rehearing overruled.

55 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages, numbered from 1 to 39 inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals (together with a copy of the opinion of said court in Groff *vs.* Miller, No. 1199) in the case of James S. Barton Key, appellant, *vs.* William F. Roberts, No. 1220, October term, 1902, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 26th day of November, A. D. 1902.

Seal Court of Appeals, District of Columbia.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.